TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted]1915

No. [redacted] 133

NORTHERN PACIFIC RAILWAY COMPANY, PETITIONER,

vs.

MARY A. MEESE ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 18, 1914.
CERTIORARI AND RETURN FILED MAY 18, 1914.

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(24,176)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 1025.

NORTHERN PACIFIC RAILWAY COMPANY, PETITIONER,

vs.

MARY A. MEESE ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 1, 1914.

COPY BOUND CL

No. 2287

United States

Circuit Court of Appeals

For the Ninth Circuit.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, a Minor, CATHERINE MEESE, a Minor, LIZZIE MEESE, a Minor, WILLIE MEESE, a Minor, BENNIE MEESE, a Minor, by Their Guardian ad Litem, MARY A. MEESE,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

FILMER BROS. CO. PRINT 330 JACKSON ST., S. F., CAL.

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INDEX OF PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

[Caption.]

Names and Addresses of Counsel.

GOVNOR TEATS, Esq., Attorney for Plaintiffs in Error,
510 Bernice Building, Tacoma, Washington.

LEO TEATS, Esq., Attorney for Plaintiffs in Error,
510 Bernice Building, Tacoma, Washington.

RALPH TEATS, Esq., Attorney for Plaintiffs in Error,
510 Bernice Building, Tacoma, Washington.

C. H. WINDERS, Esq., Attorney for Defendant in Error,
Lowman Building, Seattle, Washington.

[1*]

[Complaint.]

In the District Court of the United States for the Western District of Washington, Northern Division.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, a Minor, CATHERIN MEESE, a Minor, LIZZIE MEESE, a Minor, WILLIE MEESE, a Minor, BENNIE MEESE, a Minor, by Their Guardian ad Litem, MARY A. MEESE,
Plaintiffs,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,
Defendant.

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*Page-number appearing at foot of page of original certified Record.

Plaintiffs herein complaining of the defendant company say:

I.

That on the 12th day of April, 1913, Benjamin Meese, deceased, received injuries through the carelessness and negligence of the defendant company and from said injuries the said Benjamin Meese died on the morning of the 17th day of April, 1913, in the city of Seattle, King County, Washington.

That the deceased, Benjamin Meese, left surviving him, his wife, plaintiff herein, Mary A. Meese; and also eight (8) children, also plaintiffs herein, to wit:

May Meese, of the age of twenty-two (22) years,
Edith Meese of the age of twenty (20) years,
Annie Meese of the age of eighteen (18) years,
Alfred Meese of the age of sixteen (16) years,
Catherin Meese of the age of thirteen (13) years,
Lizzie Meese of the age of twelve (12) years,
Willie Meese of the age of nine (9) years,
Bennie Meese of the age of six (6) years.

That all of said plaintiffs are citizens of the State of Washington, **[2]** residing in Seattle, King County, Washington.

That on the 29th day of May, 1913, Mary A. Meese was appointed by this Honorable Court guardian ad litem of the above-named minor children for the purpose of commencing and prosecuting their action against the Northern Pacific Railway Company, defendant herein, jointly with the surviving wife and other surviving children of Benjamin Meese.

That the Northern Pacific Railway Company is at this time, and was at all the times herein mentioned,

a corporation organized and existing under the laws of Wisconsin, owning and operating a railway system carrying freight for hire in the State of Washington and at the times and places hereinafter mentioned.

II.

On the 12th day of April, 1913, and for a long time prior thereto, Benjamin Meese, deceased, was in the employ of the Seattle Brewing & Malting Company, in its plant located at Georgetown in the city limits of the city of Seattle, King County, Washington; and as part of his duty under his employment with the said Brewing Company was to assist in loading beer upon the cars and also to place Government stamps upon the barrels half barrels, quarter barrels when filled with beer and before the same were loaded into the railroad cars spotted at the proper place at said Brewing plant for said loading. That at the plant, the said defendant had a railroad track running alongside of the wire house and buildings containing the finished products to be shipped by said Brewing Company, which said siding was connected with defendant company's switches, siding and main tracks; and the said defendant company furnished the said Brewing Company with cars on said track to be loaded with products of said plant to be **[3]** carried by said defendant company to their different points of destination. That after the said cars are placed upon said siding of said defendant company, the cars were spotted and moved by the Brewing Company to different places necessary for the loading on said siding, with appli-

ances furnished and operated by the said Brewing Company; and when the said cars were so placed upon the said siding and spotted at the proper places for loading the cars, said Brewing Company used skids and other appliances extending from the car into the wire house of the Brewing Company, for the purpose of rolling the kegs, barrels, quarter barrels or half barrels of the finished product of the Brewing Company from the plant into the car; and the said Brewing Company employed a crew of men called loaders for the purpose of loading said car with their said finished product and also with ice sometimes necessary in the shipment of the said finished product, and at the same time of loading the said car the said Brewing Company employed workmen to place the necessary Government stamps upon each of the receptacles of the said finished product, which was usually done while said receptacles were moving along the said skids; and the workmen who performed said work usually stood upon the floor or platform beneath the skids and which platform ran alongside of the building and plant of the Brewing Company and into the opening in the building or plant where the finished product was taken from the storehouse or plant. That while loading and filling the said car, the movement of the said car, especially without notice to the loading crew and the employee who placed the Government stamps upon the receptacles, was dangerous to the workmen of the Brewing Company, as the movement of the said car would cause the skids and receptacles of the finished product [4] to fall upon the employees of the

Brewing plant and injure them.

III.

That at the time of the accident herein complained of, the deceased husband and father was placing Government stamps upon the receptacles, half barrels of the finished products of the Brewing Company, in his regular course of employment with the Brewing Company, and located to the south of the skids and half barrels as they moved from the plant of the Brewing Company into the car.

IV.

That while the said deceased, Benjamin Meese, was so employed placing the Government stamps upon the half barrels and filling and loading a car upon said siding, on the 12th day of April, 1913, at about the hour of 6:10 o'clock of the evening of said day, the said defendant company, by and through its switchman, locomotive engineer and employees carelessly and negligently without warning to the deceased, Benjamin Meese, and without warning to any of the loading crew, then in the employ of the said Brewing Company loading the car upon the said siding, knowing that said men were at that time loading the car, caused a number of cars to come down the said siding alongside of the plant of the said Brewing Company with tremendous force and momentum, striking the car then being loaded with tremendous force and momentum, knocking the car along the track causing the skid then being used by loading crew to load the said car to fly backwards and against the deceased, causing large number of half barrels loaded with the finished product of the

Brewing Company upon the said skids to fall upon the deceased, maiming and injuring him so that from said injuries so received through the carelessness and negligence of the defendant company the said Benjamin Meese, deceased, **[5]** died on the morning of the 17th day of April, 1913, leaving his widow and children, parties plaintiff herein.

V.

That immediately after the accident and injury to Benjamin Meese, deceased, plaintiffs herein employed a surgeon and doctor for the purpose of treating and caring for the deceased, and that the said doctor and surgeon attended the deceased during the several days he lived, performed operations, and that the service so rendered are of the reasonable value of Two Hundred and Fifty ($250.00) Dollars. That the plaintiffs herein removed the deceased during his illness to the hospital and incurred a liability there of Forty and 53/100 ($40.53) Dollars. That the burial of the deceased caused the plaintiffs herein the sum of about Four Hundred and Twenty-five ($425.00) Dollars.

VI.

That at the time of the accident herein complained of the deceased Benjamin Meese, was fifty-two (52) years of age, an able-bodied, strong and healthy person, earning and able to earn about ninety ($90.00) dollars per month, living with and supporting his family, consisting of himself and the parties plaintiff herein. That he was a loved and loving husband and father, devoting his services, attention and care upon his family, educating his minor children, rear-

ing them in culture and giving them intellectual, moral and physical training as becomes a father. That the plaintiffs herein are damaged through the wrongful death of their husband and father, through the negligence and carelessness of the defendant company in the sum of Twenty-five Thousand Seven Hundred Fifteen and 53/100 ($25,715.53) Dollars.

Wherefore, plaintiffs pray judgment against the **[6]** defendant in the sum of Twenty-five Thousand Seven Hundred Fifteen and 53/100 ($25,715.53) Dollars, together with their costs and disbursements herein.

TEATS, TEATS & TEATS,
Attorneys for Plaintiff. **[7]**

[Verification.] **[8]**

[Caption.]

Demurrer.

Comes now the defendant Northern Pacific Railway Company, a corporation, and entering its appearance herein, demurs to the complaint of the plaintiffs, and for grounds of demurrer states:

I.

That the plaintiffs' complaint fails to state facts sufficient to constitute a cause of action against the defendant for the reason:

a. That there is no sufficient statement of facts set forth in said complaint to show that the accident referred to therein was the result of negligence or want of care on the part of the defendant.

b. That there is no authority in law under which the plaintiffs' action can be maintained as against

this answering defendant, it appearing from the complaint that Benjamin Meese, on account of whose wrongful death this action was brought, sustained the injuries of which complaint is made, at the place of work and plant of his employer, and that plaintiffs' claim comes within the terms of Chapter 74 of the Session Laws of the State of Washington for 1911, being an act relating to **[9]** compensation of injured workmen.

II.

That the Court has no jurisdiction of the subject matter of this action, the injuries to the plaintiffs' decedent having occurred while he was employed at the works and plant of his employer, and all rights of action by reason of the matters set forth in the plaintiffs' complaint have been withdrawn from the jurisdiction of the Court by Chapter 74 of the Session Laws of Washington for 1911 known as the Workmen's Compensation Act.

III.

That there is a defect of parties plaintiff.

C. H. WINDERS,
Attorney for Defendant.

[Verification.] **[10]**

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 2489.

MARY A. MEESE et al.,

Plaintiffs,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant.

Order Sustaining Demurrer and Judgment of Dismissal.

BE IT REMEMBERED that this cause came on duly and regularly for hearing before the Court on the 7th day of July, 1913, upon the demurrer of the defendant to the plaintiffs' complaint, plaintiffs appearing by their attorneys Messrs. Teats, Teats & Teats and the defendant by its attorney, C. H. Winders, and the matter being duly and regularly submitted to the Court by both parties and the Court having taken the cause under advisement and having thereafter filed herein his written opinion sustaining said demurrer, which said opinion was filed on July 10, 1913, and the defendant now moving for an order sustaining said demurrer it is by the Court ordered, adjudged and decreed that the defendant's demurrer to the plaintiffs' complaint be and the same is hereby sustained.

And the plaintiffs in open court, through their attorney, electing to stand upon their complaint with-

out amendment, it is now upon motion of the defendant ordered, adjudged and decreed that the plaintiffs take nothing by their alleged cause of action herein, and that this action be and the same is hereby dismissed, and that the defendant **[11]** do have and recover of and from the plaintiffs its costs and disbursements herein to be taxed, to all of which the plaintiffs except and an exception is allowed.

Done in open court this 11th day of July, 1913.

EDWARD E. CUSHMAN,
Judge.

[Indorsed]: Judgment of Dismissal. Filed in the U. S. District Court, Western Dist. of Washington, July 14, 1913, Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. **[12]**

[Caption.]

Assignment of Errors.

In the United States Circuit Court of Appeals for the Ninth Circuit:

Now comes the above plaintiffs in error by their attorneys Teats, Teats and Teats, and say that in the record and proceedings in the Court below in the above-entitled action therein, there is substantial error in this: First, that the Court erred in sustaining the demurrer of the defendant therein to the complaint of the plaintiffs therein, for the reason that said complaint states a complete cause of action against the defendant therein. Second, that the Court erred in rendering judgment therein in dismissing the plaintiffs' action therein, for the reason

that the said judgment was contrary to law.

TEATS, TEATS & TEATS,
Attorneys for Plaintiffs in Error.

[Acceptance of Service, etc.] **[13]**

[Caption.]

Petition for Writ of Error.

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Now comes Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a minor, Catherine Meese, a minor, Lizzie Meese, a minor, Willie Meese, a minor, Bennie Meese, a minor, by their guardian ad litem, Mary A. Meese, plaintiffs in error, and petitions this Honorable Court to allow a Writ of Error to be directed to the District Court of the United States for the District of Washington, Northern Division, to remove to this, the United States Circuit Court of Appeals for the Ninth Circuit for a review thereof, the record in the case lately pending in said court below, wherein above-named plaintiffs in error were plaintiffs and the above-named defendant in error was defendant, and particularly the record of the judgment rendered by said District Court in the said cause wherein the said Court below sustained the demurrer of the defendant to the complaint of the plaintiffs and dismissed the said plaintiffs said cause at their costs; said judgment was duly entered on record therein on the 11th day of July, 1913; that plaintiffs be allowed to perfect **[14]** this appeal on filing an appeal bond in the sum of two hundred dollars.

Your petitioners respectfully state that they have this day filed herewith their assignment of errors committed by the Court below in said cause, and intended to be urged by your petitioners and plaintiffs in error in the prosecution of this their suit in error.

Dated July 11, 1913.

TEATS, TEATS & TEATS,
Attorneys for Plaintiffs in Error.

[Acknowledgment of Service, etc.] **[15]**

[Caption.]

Order Allowing Writ of Error.

Upon a petition of the plaintiffs herein, they having filed their assignments of error, it is ordered that a writ of error be, and is hereby allowed, to have reviewed in the United States Circuit Court of Appeals Ninth Circuit, the judgment heretofore entered herein, upon the plaintiffs in error filing their cost bond in the sum of Two Hundred Dollars.

EDWARD E. CUSHMAN,
United States District Judge.

[Endorsed: Filed, etc.] **[16]**

[Caption.]

Appeal Bond.

KNOW ALL MEN BY THESE PRESENTS, That we, Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a minor, Catherine Meese, a minor, Lizzie Meese, a minor, Willie Meese, a minor, and Bennie Meese, a minor, by their Guardian ad litem, Mary A. Meese, as principals, and Fidelity and Deposit Company of Maryland, as Surety,

are held and firmly bound unto the Northern Pacific Railway Company, a corporation, defendant, above named, in the sum of Two Hundred ($200.00) Dollars, to be paid to the said Northern Pacific Railway Company or its assigns, which payment well and truly to be made, we bind ourselves and each of us jointly and severally, and our and each of our successors, representatives, assigns, executors and administrators, firmly by these presents.

Sealed with our seals and dated this 15th day of July, 1913.

Whereas, the above-named plaintiffs have sued out a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above-entitled cause in the District Court of the United States for the Western **[17]** District of Washington, Northern Division, and

Now, therefore, the condition of this obligation is such, that if the above-named plaintiffs, Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a minor, Catherine Meese, a minor, Lizzie Meese, a minor, Willie Meese, a minor, Bennie Meese, a minor, by their guardian ad litem, Mary A. Meese, shall prosecute said Writ to effect and answer for all costs if it shall fail to make good its plea, then

this obligation shall be void; otherwise to remain in full force and effect.

MARY A. MEESE,
MAY MEESE,
EDITH MEESE and
ANNA MEESE,
ALFRED MEESE, a Minor,
CATHERINE MEESE, a Minor,
LIZZIE MEESE, a Minor,
WILLIE MEESE, a Minor,
BENNIE MEESE, a Minor,
By their Guardian ad Litem,
MARY A. MEESE.
By their Attorneys of Record.
TEATS, TEATS and TEATS,
Principals.
FIDELITY & DEPOSIT COMPANY, of Maryland.
By H. T. HANSEN,
Attorney in fact.

The above bond and sufficiency of the surety on the same are hereby approved this 16th day of July, 1913.

EDWARD E. CUSHMAN,
Presiding District Judge.

[Endorsed: Filed, etc.] **[18]**

[Opinion.]

[Caption.]

CUSHMAN, District Judge.

This suit was brought to recover for the death of the husband and father of the plaintiffs, alleged to

have been caused by the wrongful act of the defendant. Defendant demurs to the complaint upon several grounds, the only one argued being,

> "That there is no authority in law under which the plaintiffs' action can be maintained as against this answering defendant, it appearing from the complaint that Benjamin Meese, on account of whose wrongful death this action was brought, sustained the injuries of which complaint is made, at the place of work and plant of his employer, and that plaintiffs' claim comes within the terms of Chapter 74 of the Session Laws of the State of Washington for 1911, being an act relating to compensation of injured workmen."

The complaint alleges:

> "On the 12th day of April, 1913, and for a long time prior thereto, Benjamin Meese, deceased, was in the employ of the Seattle Brewing & Malting Company, in its plant located at Georgetown in the city limits of the City of Seattle, King County, Washington; and as part of his duty under his employment with the said Brewing Company, was to assist in loading beer upon the cars and also to place Government stamps upon the barrels, half barrels, quarter barrels when filled with beer and before the same were loaded into the railroad cars spotted at the proper place at said Brewing plant for said loading. **[19]** That at the plant, the said defendant had a railroad track running alongside of the wire house and buildings containing the

finished products to be shipped by said Brewing Company, which said siding was connected with defendant Company's switches, siding and main tracks; and the said defendant Company furnished the said Brewing Company with cars on said track to be loaded with products of said plant to be carried by said defendant Company to their different points of destination. That after the said cars are placed upon said siding of said defendant Company, the cars were spotted and moved by the Brewing Company to different places necessary for the loading on said siding, with appliances furnished and operated by the said Brewing Company; and when the said cars were so placed upon the said siding and spotted at the proper places for loading the cars, said Brewing Company used skids and other appliances extending from the car into the wire house of the Brewing Company, for the purpose of rolling the kegs, barrels, quarter barrels or half barrels of the finished product of the Brewing Company from the plant into the car; and the said Brewing Company employed a crew of men called loaders for the purpose of loading said car with their said finished product and also with ice sometimes necessary in the shipment of the said finished product and at the same time of loading the said car, the said Brewing Company employed workmen to place the necessary Government stamps upon each of the receptacles of the said finished product, which was usually done while said receptacles were

moving along the said skids; and the workmen who performed said work usually stood upon the floor or platform beneath the skids and which platform ran alongside of the building and plant of the Brewing Company and into the opening in the building or plant where the finished product was taken from the storehouse or plant. That while loading and filling the said car, the movement of the said car, especially without notice to the loading crew and the employee who placed the Government stamps upon the receptacles, was dangerous to the workmen of the Brewing Company, as the movement of the said car would cause the skids and receptacles of the finished product to fall upon the employees of the Brewing plant and injure them.

"That at the time of the accident herein complained of, the deceased husband and father, was placing Government stamps upon the receptacles, half barrels of the finished products of the Brewing Company, in his regular course of employment, with the Brewing Company and located to the south of the skids and half barrels as they moved from the plant of the Brewing Company into the car.

"That while the said deceased, Benjamin Meese, was so employed, placing Government stamps upon the half barrels and filling and loading a car upon said siding, on the 12th day of April, 1913, at about the hour of 6:10 o'clock of the evening of said day, the said defendant

Company by and through its switch-man, locomotive engineer and employees, carelessly and negligently without warning to the deceased, Benjamin Meese, and without warning to any of the loading crew, then in the employ of the said Brewing Company, loading the car upon the said siding, knowing that said men were at that time loading the car, caused a number of cars to come down the said siding alongside of the plant of the said Brewing Company with tremendous force and momentum, striking the car then being loaded, with tremendous force and momentum, knocking the car along the track, causing the skid then being used by loading crew to load the said car to fly backwards and against the deceased, causing large number of half barrels loaded with the finished product of the Brewing Company upon the said skids to fall upon the deceased maiming and injuring him so that from said injuries so received through the carelessness and negligence of the defendant Company, the said Benjamin Meese, [20] deceased, died on the morning of the 17th day of April, 1913, leaving his widow and children, parties plaintiff herein."

TEATS, TEATS & TEATS, for Plaintiffs.
C. H. WINDERS, for Defendant.

The Workmen's Compensation Law (Washington Session Laws 1911, p. 345), provides:

"* * * * The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises

are withdrawn from private controversy, and sure and certain relief for workmen, injured in extrahazardous work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided. (Sec. 1, pp. 345 and 346.) * * *

"Workman means every person in this state, who, after September 30, 1911, is engaged in the employment of an employer carrying on or conducting any of the industries scheduled or classified in section 4, whether by way of manual labor or otherwise, and whether upon the premises or at the plant, or, he being in the course of his employment, away from the plant of his employer: 'PROVIDED, HOWEVER, That if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children, or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the state for the benefit of

the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the state may be prosecuted, or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department. (Sec. 3, pp. 347 and 348.) * * *

"Each workman who shall be injured whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever." (Sec. 5, p. 356.)

No question is made but that the employment of the deceased was of an extrahazardous character and within those employments provided for in the act. The question presented **[21]** is purely one of statutory construction.

Upon the argument much was said concerning the constitutionality of a legislative act compelling contribution from one person, or employer, to be used in

paying for the negligence of another. This phase of the act is not now before the Court. That is a defense only to be made by those obliged to contribute to, or those charged with the duty of administering the funds contributed. The question of legislative power may, in this case, only be considered as, possibly, one of the guides to be resorted to in determining the legislative intent manifested by the law as written.

There is no right of action at common law to recover for death occasioned by the wrongful act of another.

13 Cyc. 310.

It is a right solely given by statute. A right such as this which the legislature gives, it may, of course, take away. The sole question, therefore, is: What was the legislative intent concerning this matter? Was it to end all suits at law for the injury or death of employees while engaged in certain occupations, no matter by whom injured or killed? Or, was it only to end such controversies between employer and employee?

Parts of the act, taken alone, would justify either conclusion. The title provides:

> "An Act relating to the compensation of injured workmen in our industries."

This shows a broad purpose—broad enough to include all injuries caused by any one to such "workman in our industries."

Section 1 announces:

> "The common law system governing the remedy of workmen against employers for injuries

received in hazardous work is inconsistent with modern industrial conditions."

This shows a narrower view; but, as shown by the parts of the act quoted above, it does not stand alone. Section III of the act, above quoted, provides that, when the deceased workman is **[22]** killed "away from the plant of his employer," through the negligence of another "not in the same employ," his wife or children may elect whether to take, under the act, the industrial insurance therein provided for, or seek to recover from such other—that is, recover in an ordinary law action for such other's negligence.

In this case, the complaint shows that the deceased was—giving the ordinary meaning to the words—killed, not "away from," but at the plant of his employer. Sections III and V, in classifying the injuries by the place where they occur, both contain the expression, "whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer." "At the plant" may include less or more than "on the premises," depending on the relative extent of the two; but these two expressions show an intention not to limit the application of the law to real property boundaries.

The proviso, expressly preserving the right of action at law for the death of an employee, resulting from an injury "occurring away from the plant of the employer" clearly shows an intent to except from that provision of the act, abolishing all private controversies and all rights of civil action, what, but for such provision, would have been abolished, and,

as the right of civil action is alone preserved when the injury occurs "away from the plant of the employer," then it is not preserved, but is abolished when it occurs at the plant of the employer.

This intent is further manifested by Section V of the act providing for the payment of industrial insurance from the fund created by the act, which "shall be in lieu of any and all rights of action whatsoever against any person whomsoever," "Except as in this act otherwise provided."

The only relevant exception is, without doubt, the one referred to in the provision of the act providing:

> "That if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another **[23]** not in the same employ, the injured workman, or if death result from the injury, his widow, children or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case." (p. 348.)

Courts have often had occasion to point out that the intent may frequently more satisfactorily be

shown by the nature of an exception than in any other way. This seems to be such a case.

Demurrer sustained.

Filed July 10, 1913. **[24]**

Writ of Error [Copy].

UNITED STATES OF AMERICA.

The President of the United States of America to the Honorable, the Judge of the District Court of the United States for the Western District of Washington, Northern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of dismissal which is in the said District Court before you, or some of you between Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a minor, Catherine Meese, a minor, Lizzie Meese, a minor, Willie Meese, a minor, Bennie Meese, a minor, by their guardian ad litem, Mary A. Meese, plaintiffs in error, and Northern Pacific Railway Company, a corporation, defendant in error, a manifest error hath happened to the damage of the said plaintiffs in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ, so that you have

the same at San Francisco, in said Circuit, on the 13th day of August, 1913; and that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, which of right and according to law and custom of the United States ought to be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, this 14th day of July, 1913.

[Seal] FRANK L. CROSBY,

Clerk of the District Court of the United States District Court, for the Western District of Washington. **[25]**

Allowed by

[Seal] EDWARD E. CUSHMAN,

District Judge of the United States, Presiding in the District Court of the United States, for the Western District of Washington, Northern Division.

[Admission of Service, etc.]

Filed July 16, 1913. **[26]**

[Caption.]

Citation [Copy].

UNITED STATES OF AMERICA.

The President of the United States of America to Northern Pacific Railway Company, a Corporation, Greeting:

You are cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the courtroom of said Court, in the city of San Francisco, in the State of California,

within thirty (30) days after the date of this Citation, pursuant to Writ of Error filed in the Clerk's office of the District Court of the United States, for the Western District of Washington, Northern Division, wherein Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a minor, Catherine Meese, a minor, Lizzie Meese, a minor, Willie Meese, a minor, Bennie Meese, a minor, by their guardian ad litem, Mary A. Meese, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said Writ of Error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf. **[27]**

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, the 14th day of July, 1913.

[Seal] EDWARD E. CUSHMAN,
Judge of the District Court of the United States.

[Admission of Service, etc.]

Filed July 14, 1913. **[28]**

[Caption.]

Praecipe.

To the Clerk:

Please make and prepare the record for the Circuit Court of Appeals in the above-entitled action, to wit: Complaint, Demurrer, Order Sustaining Demurrer and Judgment Dismissing Case, Assignment of Error, Petition for Writ of Error, Order Allowing Writ of Error, Appeal Bond, Opinion of Court.

TEATS, TEATS and TEATS.

[Endorsedment of filing, etc.] **[29]**

[Caption.]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify the foregoing 29 typewritten pages numbered from 1 to 29, inclusive, to be a true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause on Writ of Error therein in the United States Circuit Court of Appeals for the Ninth Circuit, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on return to said Writ of Error herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the foregoing to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiffs in error for the preparation and certification of the typewritten transcript of record issued to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's Fee (Sec. 828 R. S. U. S. as Amended by Sec. 6 Act of March 2, 1905) for making transcript of the record for printing purposes, 84 folios at 20c per folio.....	$16.80
Certificate to certified copy of type-written transcript of record.....	.30
Seal to said certificate.....	.40
	$17.50

I hereby certify that the above cost for preparing and certifying record amounting to $17.50 has been paid to me by Messrs. Teats, Teats & Teats, attorneys for plaintiffs in error.

I further certify that I hereto attach and herewith transmit the original Writ of Error and original Citation issued in this cause.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 17th day of July, 1913.

[Seal] FRANK L. CROSBY,
Clerk.

Writ of Error [Original].

UNITED STATES OF AMERICA.

The President of the United States of America, to the Honorable, the Judge of the District Court of the United States for the Western District of Washington, Northern Division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of dismissal which is in the said District Court before you, or some of you

between Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a minor, Catherine Meese, a minor, Lizzie Meese, a minor, Willie Meese, a minor, Bennie Meese, a minor, by their guardian ad litem, Mary A. Meese, Plaintiffs in Error, and Northern Pacific Railway Company, a corporation, Defendant in Error, a manifest error hath happened to the damage of the said Plaintiffs in Error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ, so that you have the same at San Francisco, in said Circuit, on the 13th day of August, 1913; and that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, which of right and according to law and custom of the United States ought to be done.

WITNESS, the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court

of the United States, this 14th day of July, 1913.

[Seal] FRANK L. CROSBY,

Clerk of the District Court of the United States District Court, for the Western District of Washington.

Allowed by

[Seal] EDWARD E. CUSHMAN,

District Judge of the United States, Presiding in the District Court of the United States, for the Western District of Washington, Northern Division.

[Admission of Service, etc.]

[Caption.]

Citation [Original].

UNITED STATES OF AMERICA.

The President of the United States of America to Northern Pacific Railway Company, a Corporation, Greeting:

You are cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the courtroom of said court, in the city of San Francisco, in the State of California, within thirty (30) days after the date of this Citation, pursuant to Writ of Error filed in the Clerk's office of the District Court of the United States, for the Western District of Washington, Northern Division, wherein Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a minor, Catherine Meese, a minor, Lizzie Meese, a minor, Willie Meese, a minor, Bennie Meese, a minor, by their

guardian ad litem, Mary A. Meese, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said Writ of Error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the Supreme Court of the United States, the 14th day of July, 1913.

[Seal] EDWARD E. CUSHMAN,
Judge of the District Court of the United States.

[Admission of Service, etc.]

[Stipulation Under Rule 23 as to Printing Record.]

[Title of Cause.]

In printing the record the Clerk shall eliminate all captions and verifications, excepting the caption of the complaint, and in lieu thereof print the words: "Caption" and "Verification"; also all file marks, admissions and proof of service.

TEATS, TEATS & TEATS,
Attorneys for Plaintiff in Error.
C. H. WINDERS,
Attorney for Defendant in Error.

[Endorsed]: No. 2287. In the United States Circuit Court of Appeals for the Ninth Circuit. Filed Jul. 21, 1913. F. D. Monckton, Clerk.

[Endorsed]: No. 2287. United States Circuit Court of Appeals for the Ninth Circuit. Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a Minor, Catherine Meese, a Minor, Lizzie Meese, a Minor, Willie Meese, a Minor, Bennie Meese, a Minor, by Their Guardian ad Litem, Mary A. Meese, Plaintiffs in Error, vs. Northern Pacific Railway Company, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed July 21, 1913.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287

United States
Circuit Court of Appeals
For the Ninth Circuit.

MARY A. MEESE et al.,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the September term A. D. 1913, of the United States Circuit Court of Appeals for the Ninth Circuit, held at the courtroom, in the City of Seattle, in the State of Washington, on Monday, the eighth day of September, in the year of our Lord one thousand nine hundred thirteen: Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 2287.

MARY A. MEESE et al.,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Order of Submission.

By consent of counsel for the respective parties thereto, ORDERED, above-entitled cause submitted to the Court for consideration and decision, on briefs, without oral argument.

At a stated term, to wit, the October Term A. D. 1913, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday the sixteenth day of February, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge; Honorable ERSKINE M. ROSS, Circuit Judge.

No. 2287.

MARY A. MEESE et al.,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Order Directing Filing of Opinion and Filing and Recording of Judgment.

ORDERED, that the opinion this day rendered by this Court in the above-entitled cause be forthwith filed by the clerk, and that a judgment be filed and recorded in the minutes of the Court in accordance with said opinion.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, a Minor, CATHARINE MEESE, a Minor, LIZZIE MEESE, a Minor, WILLIE MEESE, a Minor, BENNIE MEESE, a Minor, by Their Guardian ad Litem, MARY A. MEESE,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Opinion, U. S. Circuit Court of Appeals.

WRIT OF ERROR TO THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON, SOUTHERN DIVISION.

Action at law by the plaintiffs, as the wife and children of Benjamin Meese, deceased, to recover damages for the wrongful death of said decedent.

The plaintiffs, the wife and children of Benjamin Meese, deceased, citizens of the State of Washington, filed their complaint in the court below against the defendant, Northern Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, to recover from said defendant the sum of $25,715.53 as

damages sustained by them by reason of the death of their said husband and father.

It appeared from the complaint that the defendant maintained a track or switch connecting with its main tracks, by means of which freight-cars were furnished to the Seattle Brewing and Malting Company for the loading of the finished product of its plant situate in the City of Seattle, Washington; that said switch ran alongside of and parallel with a house or building of the brewing company known as the wire-house, in which was stored the finished product of the plant to be loaded into cars for shipment to various parts of the country; that the cars left on said track or switch by the defendant were loaded with the barrels containing the finished product of the brewing company by means of skids and other appliances extending from the wire-house into the car, said barrels being rolled from said wire-house along and over the skids into the car.

It further appeared from said complaint that on the 12th day of April, 1913, the decedent, Benjamin Meese, was in the employ of said brewing company at its said plant in the City of Seattle, Washington; that his duties, among others, as such employee, consisted in placing Government stamps upon the barrels containing the finished product of the brewing company, and, also, in assisting in loading said barrels from the wire-house of the brewing company into the cars supplied by the defendant on its said track or switch, for that purpose; that at the time the decedent received the injuries from which he afterwards died, he was engaged, pursuant to his duties as an

employee of said brewing company, in placing Government stamps upon the barrels containing the finished product of said brewing company, as they were being rolled along one of the skids above referred to from the wire-house of the brewing company into the car of the defendant standing on said track or switch; that for this purpose he was standing on a platform which ran below said skid and along the side of and parallel with said wire-house, and between said wire-house and the track or switch of the defendant, such position being the position from which said work and duty was usually carried on and performed by employees of the brewing company when engaged in placing Government stamps upon its finished product; that while the decedent was so employed, the defendant by and through its agents and employees carelessly and negligently and without warning to the deceased, caused a number of cars to come down its siding or switch with tremendous force and momentum, striking the car then being loaded with the finished product of the brewing company, causing the skid then being used for that purpose to fly back against the decedent, whereby a large number of barrels containing said finished product then being moved and rolled along said skid fell upon said decedent causing the injuries from which he afterwards died.

To the complaint the defendant interposed a demurrer on the ground that the same failed to state facts sufficient to constitute a cause of action against it; that there was no authority in law under which the plaintiffs' action could be maintained as against

the defendant for the reason that it appeared from the complaint that Benjamin Meese, on account of whose wrongful death the action was brought, sustained the injuries of which complaint was made at the place of work and the plant of his employer, and that plaintiffs' claim came within the terms of chapter 74 of the Session Laws of the State of Washington for 1911, being an act relating to compensation to injured workmen; and for the further reason that the Court had no jurisdiction of the subject matter of the action, the injuries to plaintiffs' decedent having occurred while he was employed at the works and plant of his employer, and all rights of action by reason of the matters set forth in the plaintiffs' complaint having been withdrawn from the jurisdiction of the Court by chapter 74 of the Session Laws of Washington for 1911 known as the Workmen's Compensation Act.

The demurrer was sustained by the Court below, and, the plaintiffs electing to stand upon their complaint without amendment, it was ordered and decreed that the action be dismissed; from which order and decree the plaintiffs sued out a writ of error from this Court.

GOVNOR TEATS, LEO TEATS and RALPH TEATS, for the Plaintiffs in Error.

C. H. WINDERS, for the Defendant in Error.

Before GILBERT, ROSS and MORROW, Circuit Judges.

MORROW, Circuit Judge, after stating the facts, delivered the opinion of the Court:

1. The question on this appeal arises out of an

act of the legislature of the State of Washington, approved March 14, 1911, known as and designated the "Workmen's Compensation Act" (chapter 74, Session Laws of the State of Washington, p. 345), relating to the compensation of workmen in extra-hazardous employments in that State.

The constitutionality of the act is not attacked by either party, and the fact that the death of the decedent was due to the wrongful act and negligence of the railway company is not denied by that company. But the position taken by the plaintiffs in error (the plaintiffs in the court below), and controverted by the defendant in error, the Northern Pacific Railway Company, is, that the Workmen's Compensation Act of the State of Washington does not and never was intended to deny to or take from the heirs or personal representatives of a deceased person their right of action for damages against the person or corporation whose wrongful act caused the death of such deceased person. The contention of the plaintiffs in error is: That the death of Benjamin Meese having been caused by the wrongful act and negligence of the Northern Pacific Railway Company, his heirs, the plaintiffs in error herein, are not barred by the provisions of the Workmen's Compensation Act from maintaining their statutory right of action against the railway company, by reason of the fact that at the time the decedent was killed he was in the employ of the Seattle Brewing Company, and acting in the discharge of his duties as an employee of that company.

The intent of the legislature of the State of Washington with respect to the scope and purview of the

compensation act must be ascertained by a construction of the act as a whole, keeping well in view the evils which, as declared by the act itself, it was intended to remedy.

The primary title of the act is as follows:

"Relating to compensation of injured workmen."

The secondary title is as follows:

"An act relating to the compensation of injured workmen in our industries, and the compensation to their dependents where such injuries result in death, creating an industrial insurance department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the nonobservance of regulations for the prevention of such injuries and for violation of its provisions, asserting and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of jurisdiction of such controversies, and repealing sections 6594, 6595 and 6596 of Remington and Ballinger's Annotated Codes and Statutes of Washington, relating to employees in factories, mills or workshops where machinery is used, actions for the recovery of damages and prescribing a punishment for the violation thereof."

The act contains its own declaration of legislative policy in the following specific terms:

> "Section 1: The common-law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extrahazardous work, and their families and dependents, is hereby provided regardless of questions of fault, and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of actions for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided."

Section 2 contains an enumeration of the extra-

hazardous occupations or works to which the act is intended to apply.

Section 3 contains particular definitions of the terms employed in the act.

Sections 4 to 19, inclusive, set forth the schedules of contribution and compensation of the act; and provide for the giving of notice under the act, and the methods of enforcement of the act.

Section 20 provides that any employer, workman, beneficiary or person feeling aggrieved at any decision of the department created by the act, affecting his interests under the act, may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the Superior Court of the county of his residence.

Sections 21 to 26, inclusive, create an Industrial Insurance Department, and impose the administration of said act upon that department.

By sections 27 and 28 it is provided, that if any employer shall be adjudged to be outside the lawful scope of the act, the act shall not apply to him or his workmen, and that if the provisions of the act relative to compensation for injuries to or death of workmen become invalid because of any adjudication, or be repealed, such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death.

Section 29 appropriates the sum of $1,500,000.00, or so much thereof as shall be necessary, for the purposes of the act.

In section 30 it is provided that sections 8, 9 and 10

of the act approved March 6, 1905, entitled, "An act providing for the protection and health of employees in factories, mills or workshops, where machinery is used, and providing for suits to recover damages sustained by the violation thereof, and prescribing a punishment for the violation thereof" (sections 6594, 6595 and 6596 of Remington and Ballinger's Annotated Codes and Statutes of Washington, referred to in the title of the act), "and repealing an act entitled, 'An act providing for the protection of employees in factories, mills or workshops, where machinery is used, and providing for the punishment for the violation thereof, approved March 6, 1903,' and repealing all other acts and parts of acts in conflict therewith," shall be repealed, except as to any cause of action which shall have accrued thereunder prior to October 1, 1911.

Section 31 relates to the distribution of the funds in case of a repeal of the act.

Section 32 provides that the act shall not affect any action pending or cause of action existing on the 30th day of September, 1911.

With respect to the title of the act it is to be observed that it relates to the compensation of injured workmen in industries in the State of Washington, and the compensation to their dependents where such injuries result in death; but it does not purport to relate to the statutory right of action for damages given to heirs or personal representatives of a deceased person, when the death of such person is caused by the wrongful act or neglect of another. Again, the title recites that the act contains provisions

abolishing the doctrine of negligence as a ground of recovery of damages against employers, but it does not recite that the act contains provisions abolishing the statutory right of action in favor of the heirs and personal representatives of a deceased person, where the death of such person is caused by the wrongful act or neglect of another, not an employer; and the act does not in fact abolish such right of action in express terms. The title recites that the act abolishes certain sections of Remington and Ballinger's Annotated Codes and Statutes of Washington; but it does not recite that the act repeals Sections 183 and 194 of that Compilation of Codes and Statutes, under which this action was brought, and the act does not in fact in express terms repeal either of those sections of the law. These two sections, so far as they relate to this case, provide as follows:

> "Section 183: * * * When the death of a person is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death."
>
> "Section 194: No action for a personal injury to any person occasioning his death shall abate, nor shall such right of action determine, by reason of such death, if he have a wife or child living; * * * but such action may be prosecuted or commenced and prosecuted in favor of such wife or in favor of the wife and children * * *."

With respect to the declaration of policy contained in the first section of the act, it is to be noticed that it is specifically directed against "the common-law

system governing the remedy of workmen against employers for injuries in hazardous work." The present action is not one arising under the common-law system, and it is not against the employer of the decedent. The plaintiffs in error, as the wife and children of the decedent, had no right of action against the defendant at common law, whether the defendant was an employer or a third person not an employer. Their right of action is purely statutory, and is based upon Sections 183 and 194 of the above mentioned Codes and Statutes of Washington.

The question to be determined is this: Did the compensation act repeal these sections of the prior statute law? It did not by any express provisions of the act. Did it do it by implication?

The contention of the defendant in error is that these sections have been repealed, so far as plaintiffs' right of action against the defendant in error is concerned, and that the plaintiffs must recover, if at all, under the compensation act. This contention is based, first, upon the declaration contained in the first section of the compensation act concerning the exercise of the police power of the state. The declaration is "that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen injured in extrahazardous work, and their families and dependents, is hereby provided, regardless of questions of fault, and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries, and all jurisdiction

of the courts of the State over such causes are hereby abolished, except as in this act provided." The scope of this provision of the act is clearly limited primarily by the word "premises." All phases of the *"premises"* are withdrawn from private controversy. What are the *"premises"?* The *"premises"* are the matters stated in the context, namely: "the *common-law* system governing the remedy of *workmen against employers* for injuries received in hazardous work." This withdrawal does not include the general liability for a personal tort, nor does it include specifically a right of action under the State statute for injuries resulting in death caused by the wrongful act or neglect of another not an employer. The maxim *noscitur a sociis* applies here and determines the proper interpretation of the language. (Kelley vs. City of Madison, 43 Wis. 638, 28 Am. Rep. 576; McGaffin vs. City of Cohoes, 74 N. Y. 387, 30 Am. Rep. 307.)

The defendant claims further that its contention is supported by the proviso found in section 3 of the act, relating to the definition of words used in the act, "that if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section"; but this proviso is limited in express terms to "an injury to a workman occurring away from the plant

of his employer." If the injury to a workman occurs at the plant of his employer the proviso does not apply. In the present case the injury did not occur to the workman away from the plant of his employer. It occurred while he was in the employ of his employer and at the plant of his employer. The fact that the injury was due to the negligence and wrong of another not in the same employ is not sufficient under this section to bring the case within the provisions of the compensation act; but it is not necessary for us to decide that question. The question here is, have the plaintiffs in error a remedy under the prior statute? They have if that statute has not been repealed by the compensation act. It is not claimed that it has been repealed by that act in express terms. Can it be said that it has been repealed by implication? It is plain that it has not, when we consider that by the compensation act it is provided that if a workman is injured away from the plant of his employer by the negligence or wrong of another not in the same employ, and the injury results in the death of the workman, his widow, children or dependents may elect whether to take under the compensation act, or seek a remedy against such other. What that remedy against the other is, is clearly indicated by the remainder of the section pointing to a right of action under the prior statute. The remainder of the section is as follows:

> " * * * If he take under this act, the cause of action against such other shall be assigned to the State for the benefit of the accident fund; if the other choice be made, the accident fund shall

contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the State may be prosecuted or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department."

A cause of action "against such other" which "shall be assigned to the State for the benefit of the accident fund" must be based upon the prior statute. If based upon the prior statute that statute was not repealed, but continued in force.

It is further contended by the defendant in error, that the first clause of section 5 of the compensation act provides a sure and certain remedy to workmen in case of injury, or their dependents in case of death, regardless of the right of action against any person whomsoever, and takes away such right of action. The clause is as follows:

"Each workman who shall be injured whether upon the premises or at the plant, or, he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and except as in this act otherwise provided, such pay-

ment shall be in lieu of any and all rights of action whatsoever against any person whomsoever."

The last words of this clause, taken alone, might be held to be sufficiently broad to justify the plaintiffs in error in claiming out of the accident fund the compensation provided in the act, and if such claim were made and allowed it would undoubtedly "be in lieu of any and all rights of action whatsoever, against any person whomsoever." But further than this we do not think the clause can be extended. The clause does not abolish or take away the right of action. It merely provides that an award under the act "shall be in lieu of any and all rights of action whatsoever against any person whomsoever."

The conclusion we have reached is, that the repeal of sections 183 and 194 of Remington and Ballinger's Compilation of the Codes and Statutes of Washington is not within the title of the compensation act; that the repeal of these sections is not within the declared policy of the compensation act as applied to the facts charged in the complaint in this case; that these sections have not been repealed by the compensation act either expressly or by implication; but, on the contrary, the implication to be drawn from the provisions of the statute is that these sections have not been repealed. These conclusions are abundantly supported by the general rules governing the construction of statutes.

2. It is a fundamental rule in the construction of a statute that its purview can be no broader than its title, or, as stated by Sutherland, in his work on Stat-

utory Construction, the title of the act must agree with the act itself, by expressing its subject; the title will fix bounds to the purview, for the act cannot exceed the title subject nor be contrary to it.

> "An act will not be so construed as to extend its operation beyond the purpose expressed in the title. It is not enough that the act embraces but a single subject or object, and that all its parts are germane; the title must express that subject, and comprehensively enough to include all the provisions in the body of the act. The unity and compass of the subject must, therefore, always be considered with reference to both title and purview. The unity must be sought, too, in the ultimate end which the act proposes to accomplish, rather than in the details leading to that end. * * * The title cannot be enlarged by construction when too narrow to cover all the provisions in the enacting part, nor can the purview be contracted by construction to fit the title." (Lewis' Sutherland Statutory Construction, sec. 120.)
>
> "The title of an act defines its scope, it can contain no valid provision beyond the range of the subject there stated." (Ibid., sec. 145.)

In the case of Diana Shooting Club vs. Lamereux, 89 N. W. 880, the Supreme Court of Wisconsin, applying the above rule to the case then under consideration, said:

> "When one reading a bill, with the full scope of the title thereto in mind, comes upon provi-

sions which he could not reasonably have anticipated because of their being in no way suggested by the title in any reasonable view of it, they are not constitutionally covered thereby. But in applying that rule, this other rule, which has been universally adopted, must be kept in mind: The statement of a subject includes, by reasonable inference, all those things which will or may facilitate the accomplishment thereof."

We are not asked in the present case to give effect to some clause of the act not embraced in the title (for, as we have observed, the act contains no provisions respecting injuries received by an employee in the course of his employment and at the plant of his employer, occasioned by the wrongful act and negligence of another not in the same employ and not connected in any way with the employee or with the employer); but we are asked to read into the statute under consideration, by construction, a meaning and an extent not covered by or included within the title.

We are of opinion that there is nothing in the title of the act which by direct words, or by any fair and reasonable intendment or inference, can be construed to include within the scope of the act, and, therefore, to deny to the plaintiffs in error in this case, a right of action of the nature of that asserted by them, or which can be construed as depriving the courts of jurisdiction of a controversy in the nature of the one now before this Court.

3. It will be noted, further, that there are expressly designated in the title of the act under consideration, certain sections of Remington and Ballin-

ger's Annotated Codes and Statutes of the State of Washington, to wit: Sections 6594, 6595 and 6596 thereof, which are by said act expressly repealed. But the very obvious purpose of the act (if the interpretation insisted upon by the defendant in error be the correct one), would be to repeal, in addition to the sections expressly enumerated, sections 183 and 194, providing for a right of action and the survival of a right of action in favor of the heirs or personal representatives of a decedent. But the express repeal of certain acts implies an intent not to repeal other sections. As said by the Supreme Court of New York in the case of Bowen vs. Lease, 5 Hill, 226:

> "The invariable rule of construction in respect to the repealing of statutes by implication is, that the earliest act remains in force, unless the two are manifestly inconsistent with and repugnant to each other; or unless in the latest act some express notice is taken of the former, plainly indicating an intention to abrogate it. As laws are presumed to be passed with deliberation, and with full knowledge of all existing ones on the same subject, it is but reasonable to conclude that the legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable."

Furthermore, if it was the intent of the legislature to repeal the former act, that intent should have been clearly expressed.

"There can be no intent of a statute not expressed in its words. While the object of all construction, and the purpose of all rules of interpretation is to ascertain the legislative intent, and while, in construing a particular part of a statute, the whole act may be regarded, and all other acts bearing upon the subject, and all extraneous circumstances which the legislature may be supposed to have had in mind, may be properly taken into consideration, yet the intent which is finally arrived at must be an intent consistent with, and fairly expressed by, the words of the statute themselves. * * * The intent to be ascertained and enforced is the intent expressed in the words of the statute, read in the light of the constitution and the fundamental maxims of the common law, and not an intent based upon conjecture or derived from external considerations." (Sutherland, Statutory Construction, sec. 388.)

In section 499 of the work of the same learned author, it is said:

"It is presumed that the legislature does not intend to make any change in the existing law beyond what is expressly declared."

4. The opinion of the Supreme Court of the State of Washington, dated November 28th, 1913, in the case of Peet vs. Mills (Advance Sheets, Washington Decisions, page 315), has been called to our attention by the defendant in error, in support of the position taken by it in the case at bar. We are unable to agree with counsel that the Supreme Court of the State of

Washington in that case reached a conclusion different from that reached by us in the present case. In the Washington case the plaintiff, Peet, while in the employ of the Seattle, Renton and Southern Railway Company, as a motorman, was injured in a collision between two of the railway company's trains. The defendant, Mills, was then the president of the railway company, and the plaintiff in his suit sought to hold him personally responsible for the injuries because of the allegations that when Mills assumed control and management of the railway company, it was equipped with a block signal system for use in foggy weather, which the defendant failed to operate; and that when complaint was made by the train operators of the great danger of operating the trains without the aid of the block signals, a promise was made by the defendant, Mills, to have the block signals working during foggy weather, which promise the defendant failed to keep, and as a consequence of his negligence in so failing, the plaintiff was injured. The trial Court sustained a demurrer to the complaint, and the plaintiff electing to stand upon his complaint, the action was dismissed and an appeal taken to the Supreme Court. The decision of the lower court was affirmed.

In whatever light the Supreme Court of the State of Washington may have viewed the case, no portion of the language used by it in that case can be claimed to cover the facts of the case which we now have under consideration. In the Washington case the injury was alleged to have been caused by the negligence of the defendant who was the president of the

railway, that is, in the same employ with the plaintiff. In the case now at bar the death of the decedent is alleged to have been caused by the negligence of the Northern Pacific Railway Company, a party not in the same employ with the decedent, and in no manner connected with said employment. The Washington case, viewed from this standpoint, comes within the express words of the statute; the present case does not. Here, we have an entirely different state of facts, calling for the application of entirely different principles of law; and, as we view it, the conclusions we have reached are in no sense conflicting or inconsistent with the opinion in the Washington case.

The decision of the lower Court is reversed, with directions to overrule the demurrer.

[Endorsed]: Opinion. Filed Feb. 16, 1914. [Signed] F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, a Minor, CATHERINE MEESE, a Minor, LIZZIE MEESE, a Minor, WILLIE MEESE, a Minor, BENNIE MEESE, a Minor, By Their Guardian ad Litem, MARY A. MEESE,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Judgment, U. S. Circuit Court of Appeals.

In error to the District Court of the United States for the Western District of Washington, Northern Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Western District of Washington, Northern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is reversed, with costs in favor of the plaintiffs in error and against the defendant in error, and with directions to the said District Court to overrule the demurrer.

It is further ordered and adjudged by this Court, that the plaintiffs in error recover against the defendant in error for their costs herein expended, and have execution therefor.

[Endorsed]: Judgment. Filed and entered February 16, 1914. [Signed] F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

No. 2287.

MARY A. MEESE et al.,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Motion for Order Staying Mandate.

Comes now the defendant in error, Northern Pacific Railway Company, and moves this Court for an order staying the mandate from issuing to the United States District Court for the Western District of Washington, Northern Division, pending the action of the Supreme Court of the United States upon the application of said defendant in error for a writ of *certiorari* to review the opinion and order entered thereon by this Court in the above-entitled cause.

This motion is based upon the grounds that the defendant in error is now filing in the Supreme Court of the United States its application, in form as required by statute and the rules of said court, for a writ of *certiorari* to review the decision and judgment of this Court entered herein on the 16th day of February, 1914; that the decision of this Court involves the construction of the Workmen's Compensation Act of the State of Washington, and the defendant in error believes and contends that the questions involved are of such importance to the bar of the State of Washington and to its citizens as to require in the furtherance of justice and uniformity of decision the issuance of such writ; and in the opinion of its attorneys the construction as placed on such act by this Court is contrary to the intent of the legislature of said State and contrary to the construction placed thereon by its highest court of record.

That the time necessarily involved in obtaining a decision of the Supreme Court of the United States upon its application, by reason of the distance from

San Francisco to the place of trial and the residence of the attorneys for the defendant in error, is such as to make it impossible for the defendant in error to obtain a ruling upon its application within the time prescribed by Rule 32 of this Court for the issuance of mandate upon the judgment of this Court.

This application is based on the grounds above enumerated, and upon the entire record herein and the affidavit attached hereto.

C. H. WINDERS,
Attorney for Defendant in Error, Northern Pacific Railway Company.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287.

MARY A. MEESE et al.,
Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,
Defendant in Error.

Affidavit.

United States of America,
State of Washington,
County of King,—ss.

C. H. Winders, being first duly sworn, deposes and says:

That he is attorney of record for the defendant in error; that on the 16th day of February, 1914, the

above-entitled court made and entered its opinion and order reversing the decision and judgment entered in this cause by the United States District Court for the Western District of Washington Northern Division; that by its opinion this Court construed what is known as the Workmen's Compensation Act of the State of Washington, placing thereon a construction different from that announced by the Honorable District Judge before whom this case was tried; that the defendant in error, believing that the Court was in error in adopting the construction as set forth in its opinion, and further believing that the construction of the statute in question is one of public importance, has decided to apply to the Supreme Court of the United States for a writ of *certiorari*, asking such court to review the opinion and decision of this Court, and for such purpose affiant, on behalf of said defendant in error, has obtained, or is now obtaining, from the clerk of this Court a certified copy of the entire record in this case, and is preparing a petition in conformity to the rules of the Supreme Court of the United States, and will, as soon as such certified copy of the record herein has been received, file said petition in the Supreme Court of the United States, asking such court to issue a writ of *certiorari* to the above-entitled court for the purpose of reviewing, as aforesaid, its judgment and decision; that affiant believes that the importance of the questions involved in the opinion of this Court, growing out of the construction of the Compensation Act of the State of Washington, is such as to make it to the interest of the bar of the State

of Washington as a whole to have the questions involved passed upon by the Supreme Court of the United States; and affiant further states that the construction given by this Court to the statute referred to is not the construction which has been given by some of the Superior Courts of the State of Washington, and, in affiant's opinion, is contrary to the interpretation placed upon said statute by the Supreme Court of the State of Washington; that by reason of the location of the attorneys for the defendant in error it will be impossible to file a petition for a writ of *certiorari* in the Supreme Court of the United States and have a ruling thereon prior to the time provided for by Rule 32 of this Court for the issuance of mandate, but that due diligence is being and will be used in the filing of said petition and the obtaining of a ruling of the Supreme Court of the United States thereon.

C. H. WINDERS.

Subscribed and sworn to before me this 13th day of March, 1914.

[Seal] F. C. REAGAN,
Notary Public in and for the State of Washington,
Residing at Seattle.

United States of America,
State of Washington,
County of King,—ss.

C. H. Winders, being first duly sworn, deposes and says:

That he is attorney for the defendant in error, and as such has prepared the foregoing motion for a stay

of mandate, as stated in the preceding affidavit; that a petition for a writ of *certiorari* is now being prepared and will be filed in the Supreme Court of the United States about the time of the presentation of said motion; that affiant and other of the attorneys for the defendant in error, and its general counsel, have fully considered the judgment of this Court, and in good faith have arrived at the opinion that a writ of *certiorari* should be applied for, and that this application, in the opinion of affiant, is meritorious and is not in any way interposed for the purpose of delay.

C. H. WINDERS.

Subscribed and sworn to before me this 13th day of March, 1914.

[Seal] F. C. REAGAN,
Notary Public in and for the State of Washington,
Residing at Seattle.

Due service of the inclosed motion admitted and a true copy received this 13th day of March, 1914.

GOVNOR TEATS,
LEO TEATS,
RALPH TEATS,
TEATS, TEATS and TEATS,
Attorneys for Plaintiffs in Error.

[Endorsed]: Original. No. 2287. In the United States Circuit Court of Appeals for the Ninth Circuit. Mary A. Meese et al., Plaintiffs in Error, vs. Northern Pacific Railway Company, a Corporation, Defendant in Error. Motion for Order Staying Mandate. Affidavit. Filed Mar. 17, 1914. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287.

MARY A. MEESE et al.,
Plaintiffs in Error,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,
Defendant in Error.

Notice [of Motion for Order Staying Mandate].

To the Above-named Plaintiffs in Error and to Their Attorneys, Messrs. Govnor Teats, Leo Teats, and Ralph Teats:

You and each of you will take notice that the defendant in error will present its motion, this day served upon you, for an order of the above-entitled court staying the issuance of mandate in this case, before the above-entitled court, in its courtroom in the city of San Francisco, State of California, on Wednesday, the 18th day of March, 1914, at the hour of 10 o'clock A. M., and you and each of you are hereby notified to be present at the time and place aforesaid and protect your interests as the same may appear.

Dated March 13th, 1914.

C. H. WINDERS,
Attorney for Defendant in Error, Northern Pacific Railway Company.

Copy received Mar. 13, 1914.

GOVNOR TEATS,
LEO TEATS,
RALPH TEATS,
Attys. for Plff. in Error.

[Endorsed]: Original. No. 2287. In the United States Circuit Court of Appeals for the Ninth Circuit. Mary A. Meese et al., Plaintiffs in Error, vs. Northern Pacific Railway Company, a Corporation, Defendant in Error. Notice. Filed Mar. 17, 1914. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287.

MARY A. MEESE et al.,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Order Staying Mandate.

The motion of the defendant in error, Northern Pacific Railway Company, for an order staying mandate upon the judgment of this Court heretofore entered on the 16th day of February, 1914, coming on for hearing this day in chambers, and it appearing that the time for the issuance of mandate has not elapsed, and it further appearing that the defendant in error is about to file its petition in the Supreme Court of the United States for a writ of *certiorari* to review the decision and judgment of this Court entered as aforesaid, and has ordered from the Clerk of this court for such purpose a certified copy of the entire record of this cause, as required by the rules

of the Supreme Court of the United States, and it appearing that it is proper, pending a decision of the Supreme Court of the United States upon the application of the defendant in error for a writ of *certiorari,* that the mandate upon the judgment of this Court to the United States District Court for the Western District of Washington, Northern Division, be stayed, and that the questions involved in the judgment of this Court are of such importance as to justify the filing of such application, and all of the premises being understood;

It is now ordered that the issuance of mandate upon the judgment of this Court be and the same is hereby stayed, pending a decision of the Supreme Court of the United States upon the application of the defendant in error for a writ of *certiorari* to review the decision and judgment of this Court entered herein on the 16th day of February, 1914.

Dated this 17th day of March, 1914.

WM. M. MORROW,
Judge.

O.K. As to form.
GOVNOR TEATS.
LEO TEATS.
RALPH TEATS.

Due service of the inclosed order admitted, and a true copy received this 13th day of March, 1914.

GOVNOR TEATS,
LEO TEATS,
RALPH TEATS,
Attorneys for Plaintiffs in Error.

[Endorsed]: Original. No. 2287. In the United States Circuit Court of Appeals for the Ninth Circuit. Mary A. Meese et al., Plaintiffs in Error, vs. Northern Pacific Railway Company, a Corporation, Defendant in Error. Order Staying Mandate. Filed Mar. 17, 1914. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287.

MARY A. MEESE et al.,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a Corporation,

Defendant in Error.

Certificate of Clerk U. S. Circuit Court of Appeals to Record Certified Under Section 3 of Rule 37 of the Rules of the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing sixty-seven (67) pages, numbered from and including one (1) to and including sixty-seven (67), to be a true copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, certified under section 3 of Rule 37 of the Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the Seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this twentieth day of March, A. D. 1914.

[Seal] F. D. MONCKTON,

Clerk.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Mary A. Meese, May Meese, Edith Meese, Anna Meese, and Alfred Meese et al., minors, by their guardian ad litem, Mary A. Meese, are plaintiffs in error, and Northern Pacific Railway Company is defendant in error, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the District Court of the United States for the Western District of Washington, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-ninth day of April, in the year of our Lord one thousand nine hundred and fourteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 24,176. Supreme Court of the United States, No. 1025, October Term, 1913. Northern Pacific Railway Company vs. Mary A. Meese et al. Writ of Certiorari. Docketed. No. 2287. United States Circuit Court of Appeals for the Ninth Circuit. Original Writ of Certiorari from the Supreme Court of the United States. Filed May 7, 1914. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

Supreme Court of the United States, October Term, 1913.

No. 1025.

NORTHERN PACIFIC RAILWAY COMPANY, Petitioner,
vs.
MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED Meese, a Minor; Catherine Meese, a Minor; Lizzie Meese, a Minor; Willie Meese, a Minor; Bennie Meese, a Minor, by Their Guardian ad Litem, Mary A. Meese.

Stipulation.

It is agreed that the certified record from the Circuit Court of Appeals which was filed with the petition for certiorari and which is now on file with the Clerk of this Court stand as the record here, and

that the Clerk of the Circuit Court of Appeals in making return to the writ of certiorari may return this stipulation instead of said record.

(Signed) CHARLES W. BUNN,
Attorney for Petitioner.

(Signed) GOVNOR TEATS, LEO TEATS & RALPH TEATS,
Attorneys for Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a Minor; Catherine Meese, a Minor; Lizzie Meese, a Minor; Willie Meese, a Minor; Bennie Meese, a Minor, by their Guardian ad Litem, Mary A. Meese.

[Endorsed:] Stipulation as to return to writ of certiorari. Filed May 7, 1914. (Signed) F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287.

MARY A. MEESE et al., Plaintiffs in Error,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Defendant in Error.

Certificate of Clerk U. S. Circuit Court of Appeals to Stipulation as to Return to Writ of Certiorari from Supreme Court U. S.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the next preceding page, to be a full, true, and correct copy of a "Stipulation as to Return to Writ of Certiorari", filed in the above-entitled cause on the 7th day of May, A. D. 1914, as the original thereof remains on file and of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 7th day of May, A. D. 1914.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

United States Circuit Court of Appeals for the Ninth Circuit.

No. 2287.

MARY A. MEESE et al., Plaintiffs in Error,
vs.
NORTHERN PACIFIC RAILWAY COMPANY, a Corporation, Defendant in Error.

Return to Writ of Certiorari.

By direction of the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as Clerk of said Court, in obedience to the annexed writ of certiorari issued out of the Honorable the Supreme Court of the United States and addressed to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send, without delay, to the said Supreme Court the record and proceedings in the above-entitled cause, do attach to the said Writ a certified copy of a "Stipulation As to Return to Writ of Certiorari", the original of which stipulation was filed in my office on the 7th day of May, A. D. 1914 and, pursuant thereto, do hereby send the same as the Return to the said Writ of Certiorari.

In testimony Whereof, I have hereunto set my hand and affixed the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 7th day of May, A. D. 1914.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed:] 1025/24,176.

[Endorsed:] File No. 24,176. Supreme Court U. S. October Term, 1913. Term No. 1025. Northern Pacific Railway Company, Petitioner, vs. Mary A. Meese et al. Writ of certiorari and return. Filed May 18, 1914.

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No. 1025.

Office Supreme Court, U. S.
FILED
APR 18 1914
JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1913.

NORTHERN PACIFIC RAILWAY COMPANY,
Petitioner,

vs.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, A MINOR, CATHERINE MEESE, A MINOR, LIZZIE MEESE, A MINOR, WILLIE MEESE, A MINOR, BENNIE MEESE, A MINOR, BY THEIR GUARDIAN AD LITEM, MARY A. MEESE.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

Supreme Court of the United States

OCTOBER TERM, 1913.

NORTHERN PACIFIC RAILWAY COMPANY,
Petitioner,

vs.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, A MINOR, CATHERINE MEESE, A MINOR, LIZZIE MEESE, A MINOR, WILLIE MEESE, A MINOR, BENNIE MEESE, A MINOR, BY THEIR GUARDIAN AD LITEM, MARY A. MEESE.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Honorable, the Supreme Court of the United States:

The petition of the Northern Pacific Railway Company respectfully shows to this Honorable Court:

The interpretation of an act of the Legislature of Washington approved March 14, 1911, is the only matter involved in this case. The act referred to is Chapter 74 of the laws of that year. It consists of a complete revision of the legislation and common law of the state applicable to compensation of injured workmen, abolishing remedies in the courts to recover damages for accidents and establishing an insurance

fund administered by the state and created by assessment against all hazardous industries. All employers in hazardous industries are required annually to pay into the fund percentages of their payrolls specified in the act and varying in different industries. The state treasurer is made custodian of the fund and the act contains a schedule of awards for death and for each kind of personal injury.

This action was brought in the District Court of the United States by the wife and children of Benjamin Meese, deceased, citizens of the state of Washington, against the Northern Pacific Railway Company, a corporation under the laws of Wisconsin, and the jurisdiction rested wholly on diverse citizenship.

The complaint alleged that Meese, being in the employ of the Seattle Brewing & Malting Company, on the premises of that company, while engaged in loading the product of the brewery into cars furnished by the Railway Company, was killed by the employes of the Railway Company negligently shunting other cars against those in and about which Meese was working.

The action is based on the statutes of Washington giving an action for death caused by negligence. The contention of the plaintiffs is that the compensation act before referred to is confined in its scope to actions by employes against employers, has no application to an action for injury to a workman brought against any person except his employer and therefore, Meese not having been an employe of the Railway Company, that the act does not stand in the way of this action.

The defendant on the other hand contends that the workmen's compensation act abolishes all actions in the courts by workmen in the hazardous employments referred to in the act, whether against employers or against third persons. This difference of interpretation of the state law is the only question involved.

The District Judge sustained a demurrer to the complaint, holding that the plaintiff's only remedy was for the benefits created under the act and therein specified. *Meese v. Northern Pacific Ry. Co.*, 206 Fed. 222. The Circuit Court of Appeals, in an opinion filed February 16, 1914, reversed the judgment of the District Court, holding that properly interpreted the compensation act of Washington does not profess to abolish a workman's action for negligent injury against any person other than his employer.

The Supreme Court of the State of Washington, in the case of *Peet v. Mills*, 136 Pac. Rep. 685, in an opinion delivered November 28, 1913, construed the state law, as your petitioner submits, as repealing and forbidding this action. This decision of the state Supreme Court was called to the attention of the Circuit Court of Appeals; the view of the Circuit Court of Appeals with respect thereto is more fully shown in its opinion.

The petitioner submits that there is herein presented and shown a conflict between the Circuit Court of Appeals and the highest court of the state of Washington as to the meaning of a statute of the state. And your petitioner insists that on this question the courts of the United States ought to follow and conform to the decision of the highest court of the state.

Your petitioner has herein no right of appeal to or writ of error from this honorable court, because the jurisdiction of the District Court depended entirely on diverse citizenship. Your petitioner presents herewith as a part of this petition a brief showing more fully its views upon the question involved and a transcript of the record in the Circuit Court of Appeals.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this court, directed to the United States

Circuit Court of Appeals for the Ninth Circuit, commanding said court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of said Court of Appeals in this case, which was entitled in that court "Mary A. Meese, May Meese, Edith Meese, Anna Meese, Alfred Meese, a minor, Catherine Meese, a minor, Lizzie Meese, a minor, Willie Meese, a minor, Bennie Meese, a minor, by their Guardian Ad Litem, Mary A. Meese, Plaintiffs in Error vs. Northern Pacific Railway Company, a corporation, Defendant in Error," to the end that said cause may be reviewed and determined by this court as provided by law, and that your petitioner may have such other or further relief or remedy in the premises as to this court may seem appropriate; and that the said judgment of the said Circuit Court of Appeals may be reversed by this honorable court.

CHARLES W. BUNN,
For Northern Pacific Railway Company.

No. 1025. 133

FILED
APR 18 1914
JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1913.

NORTHERN PACIFIC RAILWAY COMPANY,
Petitioner,

vs.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, A MINOR, CATHERINE MEESE, A MINOR, LIZZIE MEESE, A MINOR, WILLIE MEESE, A MINOR, BENNIE MEESE, A MINOR, BY THEIR GUARDIAN AD LITEM, MARY A. MEESE.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

CHARLES W. BUNN,
For Petitioner.

Supreme Court of the United States

OCTOBER TERM, 1913.

NORTHERN PACIFIC RAILWAY COMPANY,
Petitioner,

vs.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, A MINOR, CATHERINE MEESE, A MINOR, LIZZIE MEESE, A MINOR, WILLIE MEESE, A MINOR, BENNIE MEESE, A MINOR, BY THEIR GUARDIAN AD LITEM, MARY A. MEESE.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At the outset it should be noted that the question here raised is the interpretation of the workmen's compensation act. No question of the validity of the act can be involved. Not only was no such question considered below but it is quite obvious that no such question could have been or can be considered. This action is based on the state statute of Washington creating a cause of action for death. This action state legislation gave and state legislation may take away. The whole question therefore is of interpretation.

It is also clear that deceased was injured in an employment and at a place falling within the terms of the act. Section 2 enumerates factories, mills and workshops where machinery is used, and breweries. The definitions in Sec. 3 make it plain that these terms are intended to include all premises and yards used with factories or mills. An item in "Schedule of Contributions" (Sec. 4) is: "Breweries; bottling works; boiler works; foundries; machine shops not otherwise specified .020."

It being thus shown that the case must rest (as it was rested in the decision below) on interpretation of the act we come to consideration of the terms thereof.

The act is printed in Laws of Washington, 1911, p. 345, and printed also in appendix to this brief. The title and Sec. 1, which are the important provisions indicating the scope of the law, are as follows:

"RELATING TO COMPENSATION OF INJURED WORKMEN.

An act relating to the compensation of injured workmen in our industries, and the compensation to their dependents where such injuries result in death, creating an industrial insurance department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the non-observance of regulations for the prevention of such injuries and for violation of its provisions, asserting and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of

jurisdiction of such controversies, and repealing sections 6594, 6595, and 6596 of Remington and Ballinger's Annotated Codes and Statutes of Washington, relating to employes in factories, mills or workshops where machinery is used, actions for the recovery of damages and prescribing a punishment for the violation thereof.

Be it enacted by the Legislature of the State of Washington:

Section 1. *Declaration of Police Power.*

The common law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided."

Section 3 defines the term "workman" in this language:

"Workman means every person in this state, who, after September 30, 1911, is engaged in the employment of an employer carrying on or conducting any of the industries scheduled or classified in section 4, whether by way of manual labor or otherwise, and whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer: *Provided, however,* That if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children, or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case."

Section 5, prescribing the schedule of compensations, is introduced by the language following:

"Each workman who shall be injured whether upon the premises or at the plant or, he being in the course of his employment away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever."

The decision of the Supreme Court of Washington

in *Peet v. Mills*, filed November 28 last, is printed in appendix to this brief and is reported, 136 Pac. Rep. 685. That was an action brought by a motorman in the employ of a railway company against the president of the company, in which it was sought to hold the president personally (although he was not plaintiff's employer) on the ground of his personal negligence. The opinion of the court opens with the statement that the contention there considered is "that the act is applicable only where recovery is sought upon the ground of the negligence of the employer."

It appears from the opinion that this contention was based on two grounds: (a) that the act, being in derogation of common law and not expressly abolishing negligence as ground of recovery, except as ground of recovery against employers, should by a strict construction be limited to employers; (b) that although the body of the act contains language sufficiently broad to include all defendants, whether employers or not, this language ought to be limited by the title, which it was alleged confines the act to employers.

The court said in respect of these contentions: that the act should be construed liberally as a remedial statute, instead of strictly; that the policy of the legislature as shown in the act is that every hazardous industry should bear the whole burden arising out of injuries to its employes; that the remedies of the act are ample, full and complete to reach every injury sustained by a workman, regardless of the cause of the injury and regardless of the negligence to which it may be attributed. The court said that the act is not limited to abolishment of negligence as a ground of action against an employer; that to say so overlooks and reads out of the act the controlling

principle that each industry itself should bear the whole burden of its injuries, making these injuries a charge against the cost of production as much as the cost of tools, machinery or material entering into production. The court said:

> "That in so doing the legislative mind was intent upon the abolishment of all causes of action that may have theretofore existed, irrespective of the persons in favor of whom or against whom such right might have existed."

Again the court said:

> "For these reasons we are of the opinion that the compensation provided by the act in case of injury to any workman in any hazardous occupation was intended to be exclusive of every other remedy, and that all causes of action theretofore existing, except as they are saved by the provisos of the act, are done away with."

Touching the argument that the title is restrictive of the broad language in the body of the act referred to by the court, the court said that the clause in the title "abolishing the doctrine of negligence as a ground of recovery of damages against employers" is only one matter of several covered by the title; that the title is plainly broad enough to indicate that the act is intended to furnish the *only compensation* to be allowed injured workmen; that the title fairly includes *any and all rights of action theretofore existing* in which such compensation might have been obtained.

Coming to examine the opinion of the Circuit Court of Appeals (printed in appendix to this brief) it will be found directly and fundamentally in controversy with the opinion of the Supreme Court of Washington in *Peet v. Mills*. The Circuit Court of Appeals re-

lies largely on the contention that the title to the act is limited to the abolition of actions against employers. This was the very contention considered and overruled by the state Supreme Court. The Circuit Court of Appeals holds that the title is narrower than the body of the act. This is directly contrary to the opinion of the state Supreme Court. The Circuit Court of Appeals holds that the act should be strictly construed because in derogation of common law and previous statutory law and this ruling is in the teeth of the decision of the state Supreme Court. The Circuit Court of Appeals explains the decision of the state court in *Peet v. Mills* by the fact that the defendant, Mills, president of the railway company, was in the employ of the same corporation which employed the plaintiff motorman. But the action against Mills was not based on the relation of employer and employe; and that plaintiff and defendant were in the employ of the same corporation had nothing to do with the case. Mills was sued for negligence exactly as the Railway Company in this case is sued: the most casual reading of the opinion of the state Supreme Court shows that its decision cannot thus be explained. That court stated the contention which it overruled to be, that the act was confined to *abolishing actions for negligence of an employer.* It treated the defendant, Mills, as a stranger and not as an employer and held that the act was not so confined. Had the court regarded Mills as an employer that would have ended all controversy.

The Circuit Court of Appeals has refused to give effect to plain language in the body of the act, holding in effect that some of the provisions thereof are ineffectual because not embraced in the title: but whether the act is in whole or in part invalid on

account of a too narrow title is a question of state law and not of federal law. No provision of the federal constitution requires state acts to have any title. In this respect also the court below is directly in conflict with the state Supreme Court.

The opinion of the Circuit Court of Appeals rests partly on the argument that the workmen's compensation act does not in terms repeal sections 183 and 194 of Remington and Ballinger's Annotated Codes of Washington. These two sections, so far as important, read as follows:

> "Section 183: * * * When the death of a person is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death."
>
> "Section 194: No action for a personal injury to any person occasioning his death shall abate, nor shall such right of action determine, by reason of such death, if he have a wife or child living; * * * but such action may be prosecuted or commenced and prosecuted in favor of such wife or in favor of the wife and children * * *."

But no doubt can be entertained that actions for death are abolished by the workmen's compensation act in all the cases where actions for other injuries are abolished. There is no difference. If the act abolishes the action Meese would have had against the Railway Company it abolishes the action by representatives for his death. The whole question comes back to that which was considered and passed on by the state Supreme Court, viz., whether the act abolishes all actions for negligence or is confined to actions against employers. So far as death is concerned, it is plainly included like other injuries under the com-

pensation act, the compensation for death being the first item in the schedule. See Sec. 5.

There are good reasons why Secs. 183 and 194 of the Code were not repealed by the compensation act. These sections creating liability for death by wrongful act remain in force (a) as to all non-hazardous employment not covered by the compensation act, and (b) in the case of a workman in a hazardous employment injured "away from the plant of his employer" by negligence of a third person. The definition of "workman" in Sec. 3 contains a proviso, that in such cases the injured workman, or his representatives in case of death, shall elect whether to take under the act or to sue the wrong-doer. Touching this language the Circuit Court of Appeals argues curiously, saying that the cause of action "against such other referred to in this language must be based upon the prior statute and therefore that the prior statute is not repealed but continued in force." Obviously continued in force in the special case stated in the proviso, viz., the case of a workman injured by negligence of a third person while absent from the plant of his employer.

The District Judge in deciding this case took what seems to us plainly the correct view of this proviso, saying:

> " 'At the plant' may include less or more than 'on the premises,' depending on the relative extent of the two; but these two expressions show an intention not to limit the application of the law to real property boundaries. The proviso, expressly preserving the right of action at law for the death of an employe, resulting from an injury 'occurring away from the plant of the employer,' clearly shows an intent to except from that provision of the act, abolishing all private controversies and all rights of civil action, what, but for such provision, would have been abolished,

> and, as the right of civil action is alone preserved when the injury occurs 'away from the plant of the employer,' then it is not preserved, but is abolished, when it occurs at the plant of the employer."

It is quite evident that this proviso is intended to state the only case in which a workman in hazardous employment retains the remedy for negligence which he had before the compensation act. The result of the view of the Circuit Court of Appeals is that a workman injured by negligence of a third person away from his employer's plant must elect and cannot both sue the third person and take benefits under the compensation law; while if he is injured within his employer's plant he may have both rights and pursue both remedies without election.

There can be no doubt that the act provides a benefit for the death of Meese and that his representatives or dependents are entitled to call on the fund in the hands of the state treasurer for the compensation prescribed in Sec. 5 (a) of the act. And if this right against the fund exists it follows necessarily that, with the single exception of election of remedies where the workman is injured away from the plant, the right to recover damages against the wrongdoer is by the act abolished. The act abolished actions in every case (with the single exception noted) where it gave benefits from the insurance fund.

Whatever might be said as an original question about the interpretation of the state law, we submit that the Supreme Court of the state has determined all questions of interpretation, which in any view can be involved in this case, and that the decision of the Circuit Court of Appeals is at every point in conflict with the interpretation placed on the act by the state court. There being no federal question in the case

and the whole question being of the interpretation of the state statute, it seems necessary only to suggest that this is a case where the courts of the United States cannot properly overrule the courts of the state.

CHARLES W. BUNN,
For Petitioner.

LAWS OF WASHINGTON—1911.

Chapter 74—(H. B. 14).

Relating to Compensation of Injured Workmen.

AN ACT relating to the compensation of injured workmen in our industries, and the compensation to their dependents where such injuries result in death, creating an industrial insurance department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the non-observance of regulations for the prevention of such injuries and for violation of its provisions, asserting and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of jurisdiction of such controversies, and repealing sections 6594, 6595, and 6596 of Remington and Ballinger's Annotated Codes and Statutes of Washington, relating to employes in factories, mills or workshops where machinery is used, actions for the recovery of damages and prescribing a punishment for the violation thereof.

Be it enacted by the Legislature of the State of Washington:

Section 1. *Declaration of Police Power.*

The common law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large ex-

pense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formally occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided.

Sec 2. *Enumeration of Extra Hazardous Works.* There is a hazard in all employment, but certain employments have come to be and to be recognized as being inherently constantly dangerous. This act is intended to apply to all such inherently hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the state, in the following enumeration, and they are intended to be embraced within the term "extra hazardous" wherever used in this act, to-wit:

Factories, mills and workshops where machinery is used; printing, electrotyping, photo-engraving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, waterworks, reduction works, breweries, elevators, wharves, docks, dredges, smelters, powder works; laundries operated by power; quarries; engineering works; log-

ging, lumbering and ship building operations; logging, street and interurban railroads; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants or lines, steam heating or power plants, steamboats, tugs, ferries and railroads. If there be or arise any extra hazardous occupation or work other than those hereinabove enumerated, it shall come under this act, and its rate of contribution to the accident fund hereinafter established, shall be, until fixed by legislation, determined by the department hereinafter created, upon the basis of the relation which the risk involved bears to the risks classified in section 4.

Sec. 3. *Definitions.*

In the sense of this act words employed mean as here stated, to-wit:

Factories mean undertakings in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair or change, and shall include the premises, yard and plant of the concern.

Workshop means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale or otherwise any article or part of article, machine or thing, over which premises, room or place the employer of the person working therein has the right of access or control.

Mill means any plant, premises, room or place where machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise, together with the yards and

premises which are a part of the plant, including elevators, warehouses and bunkers.

Mine means any mine where coal, clay, ore, mineral, gypsum or rock is dug or mined underground.

Quarry means an open cut from which coal is mined, or clay ore, mineral, gypsum, sand, gravel or rock is cut or taken for manufacturing, building or construction purposes.

Engineering work means any work of construction, improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads, logging roads, interurban railroads, harbors, docks, canals; electric, steam, or water power plants; telegraph and telephone plants and lines; electric light or power lines, and includes any other works for the construction, alteration or repair of which machinery driven by mechanical power is used.

Except when otherwise expressly stated, employer means any person, body of persons, corporate or otherwise, and the legal personal representatives of a deceased employer, all while engaged in this state in any extra hazardous work.

Workman means every person in this state, who, after September 30, 1911, is engaged in the employment of an employer carrying on or conducting any of the industries scheduled or classified in section 4, whether by way of manual labor or otherwise, and whether upon the premises or at the plant, or, he being in the course of his employment, away from the plant of his employer: *Provided, however*, That if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children, or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such

other, such election to be in advance of any suit under this section, and if he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the state may be prosecuted, or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

Any individual employer or any member or officer of any corporate employer who shall be carried upon the pay roll at a salary or wage not less than the average salary or wage named in such pay roll and who shall be injured, shall be entitled to the benefit of this act as and under the same circumstances as and subject to the same obligations as a workman.

Dependent means any of the following named relatives of a workman whose death results from any injury and who leaves surviving no widow, widower, or child under the age of sixteen years, viz., invalid child over the age of sixteen years, daughter between sixteen and eighteen years of age, father, mother, grandfather, grand-mother, step-father, step-mother, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-sister, half-brother, niece, nephew, who at the time of the accident, are dependent, in whole or in part, for their support upon the earnings of the workman. Except where otherwise provided by treaty, aliens, other than father or mother, not residing within

the United States at the time of the accident are not included.

Beneficiary means a husband, wife, child or dependent of a workman, in whom shall vest a right to receive payment under this act.

Invalid means one who is physically or mentally incapacitated from earning.

The word "child" as used in this act, includes a posthumous child, a child legally adopted prior to the injury, and an illegitimate child legitimated prior to the injury.

The words injury or injured, as used in this act, refer only to an injury resulting from some fortuitous event as distinguished from the contraction of disease.

Sec. 4. *Schedule of Contribution.*

Insomuch as industry should bear the greater portion of the buden of the cost of its accidents, each employer shall, prior to January 15th of each year, pay into the state treasury, in accordance with the following schedule, a sum equal to a percentage of his total pay roll for that year, to-wit: (the same being deemed the most accurate method of equitable distribution of burden in proportion to relative hazard):

CONSTRUCTION WORK.

Tunnels, bridges, trestles, sub-aqueous works, ditches and canals (other than irrigation without blasting), dock excavation, fire escapes, sewers, house moving, house wrecking	.065
Iron or steel frame structures or parts of structures	.080
Electric light or power plants or systems, telegraph or telephone systems, pile driving, steam railroads	.050

Steeples, towers or grain elevators, not metal framed, dry-docks without excavation, jetties, breakwaters, chimneys, marine railways, water works or systems, electric railways with rock work or blasting, blasting, erecting fireproof doors or shutters..... .050

Steam heating plants, tanks, water towers or windmills, not metal frames..... .040

Shaft sinking..... .060

Concrete buildings, freight or passenger elevators, fire-proofing of buildings, galvanized iron or tin works, gas works, or syste[illegible] marble, stone or brick work, road making with blasting, roof work, safe moving, slate work, outside plumbing work, metal smokestacks or chimneys..... .050

Excavations not otherwise specified, blast furnaces ..... .040

Street or other grading, cable or electric street railways without blasting, advertising signs, ornamental metal work in buildings..... .035

Ship or boat building or wrecking with scaffolds, floating docks..... .045

Carpenter work not otherwise specified..... .035

Installation of steam boilers or engines, placing wire in conduits, installing dynamos, putting up belts for machinery, marble, stone or tile setting, inside work, mantle setting, metal ceiling work, mill or ship wrighting, painting of buildings or structures, installation of automatic sprinklers, ship or boat rigging, concrete laying in floors, foundations or street paving, asphalt laying, covering steam pipes or boilers, installation of machinery not otherwise specified..... .030

Drilling wells, installing electrical apparatus or fire alarm systems in buildings, house heating or ventilating systems, glass setting, building hot houses, lathing, paper hanging, plastering, inside plumbing, wooden stair building, road making ..... .020

OPERATION (INCLUDING REPAIR WORK) OF

(All combinations of material take the higher rate when not otherwise provided).

Logging railroads, railroads, dredges, interurban electric railroads using third rail system, dry or floating docks..... .050

Electric light or power plants, interurban electric railroads not using third rail system, quarries ..... .040

Street railways, all employes, telegraph or telephone systems, stone crushing, blasting furnaces, smelters, coal mines, gas works, steamboats, tugs, ferries..... .030

Mines, other than coal, steam heating or power plants..... ..... .025

Grain elevators, laundries, water works, paper or pulp mills, garbage works..... .020

FACTORIES USING POWER-DRIVEN MACHINERY.

Stamping tin or metal..... .045

Bridge work, railroad car or locomotive making or repairing, cooperage, logging with or without machinery, saw mills, shingle mills, staves, veneer, box, lath, packing cases, sash, door or blinds, barrel, keg, pail, basket, tub, wooden ware or wooden fibre ware, rolling mills, making steam shovels or dredges, tanks, water towers, asphalt, building material not otherwise specified, fertilizer, cement, stone with or without machinery, kindling wood, masts and spars with or without machinery, canneries, metal stamping extra, creosoting works, pile treating works..... .025

Excelsior, iron, steel, copper, zinc, brass or lead articles or wares not otherwise specified, working in wood not otherwise specified, hardware, tile, brick, terra cotta, fire clay, pottery, earthenware, porcelain ware, peat fuel, brickettes..... .020

Breweries, bottling works, boiler works, foundries, machine shops not otherwise specified.	.020
Cordage, working in food stuffs, including oils, fruits and vegetables, working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified	.015
Making jewelry, soap, tallow, lard, grease, condensed milk	.015
Creameries, printing, electrotyping, photo-engraving, engraving, lithographing	.015

MISCELLANEOUS WORK.

Stevedoring, longshoring	.030
Operating stock yards, with or without railroad entry, packing houses	.025
Wharf operation, artificial ice, refrigerating or cold storage plants, tanneries, electric systems not otherwise specified	.020
Theater stage employes	.015
Fire works manufacturing	.050
Powder works	.100

The application of this act as between employers and workmen shall date from and include the first day of October, 1911. The payment for 1911 shall be made prior to the day last named, and shall be preliminarily collected upon the pay roll of the last preceding three months of operation. At the end of each year an adjustment of accounts shall be made upon the basis of the actual pay roll. Any shortage shall be made good on or before February 1st, following. Every employer who shall enter into business at any intermediate day shall make his payment for the initial year or portion thereof before commencing operation; its amount shall be calculated upon his estimated pay roll, an adjustment shall be made on or before February 1st of the following year in the manner above provided.

For the purpose of such payments accounts shall be

kept with each industry in accordance with the classification herein provided and no class shall be liable for the depletion of the accident fund from accidents happening in any other class. Each class shall meet and be liable for the accidents occurring in such class. There shall be collected from each class as an initial payment into the accident fund as above specified on or before the 1st day of October, 1911, one-fourth of the premium of the next succeeding year, and one-twelfth thereof at the close of each month after December, 1911: *Provided*, Any class having sufficient funds credited to its account at the end of the first three months or any month thereafter, to meet the requirements of the accident fund, that class shall not be called upon for such month. In case of accidents occurring in such class after lapsed payment or payments said class shall pay the said lapsed or deferred payments commencing at the first lapsed payment, as may be necessary to meet such requirements of the accident fund.

The fund thereby created shall be termed the "accident fund" which shall be devoted exclusively to the purpose specified for it in this act.

In that the intent is that the fund created under this section shall ultimately become neither more or less than self-supporting, exclusive of the expense of administration, the rates in this section named are subject to future adjustment by the legislature, and the classifications to rearrangement following any relative increase or decrease of hazard shown by experience.

It shall be unlawful for the employer to deduct or obtain any part of the premium required by this section to be by him paid from the wages or earnings of his workmen or any of them, and the making or attempt to make any such deduction shall be a gross misdemeanor. If, after this act shall have come

into operation, it is shown by experience under the act, because of poor or careless management, any establishment or work is unduly dangerous in comparison with other like establishments or works, the department may advance its classification of risks and premium rates in proportion to the undue hazard. In accordance with the same principle, any such increase in classification or premium rate, shall be subject to restoration to the schedule rate. Any such change in classification of risks or premium rates, or any change caused by change in the class of work, occurring during the year shall, at the time of the annual adjustment, be adjusted by the department in proportion to its duration in accordance with the schedule of this section. If, at the end of any year it shall be seen that the contribution to the accident fund by any class of industry shall be less than the drain upon the fund on account of that class, the deficiency shall be made good to the fund on the 1st day of February of the following year by the employers of that class in proportion to their respective payments for the past year.

For the purposes of such payment and making good of deficit, the particular classes of industry shall be as follows:

CONSTRUCTION WORK.

Class 1. Tunnels, sewer, shaft sinking, drilling wells.

Class 2. Bridges, mill wrighting, trestles, steeples, towers or grain elevators not metal framed, tanks, water towers, wind-mills not metal framed.

Class 3. Sub-aqueous works, canal other than irrigation or docks with or without blasting, pile driving, jetties, breakwaters, marine railways.

Class 4. House moving, house wrecking, safe moving.

Class 5. Iron or steel frame structures or parts of structures, fire escapes, erecting fire-proof doors or shutters, blast furnaces, concrete chimneys, freight or passenger elevators, fire proofing of buildings, galvanized iron or tin work, marble, stone or brick work, roof work, slate work, plumbing work, metal smoke stack or chimneys, advertising signs, ornamental metal work in buildings, carpenter work not otherwise specified, marble, stone or tile setting, mantle setting, metal ceiling work, painting of buildings or structures, concrete laying in floors or foundations, glass setting, building hot houses, lathing, paper hanging, plastering, wooden stair building.

Class 6. Electric light and power plants or system, telegraph or telephone systems, cable or electric railways with or without rock work or blasting, water works or systems, steam heating plants, gas works or systems, installation of steam boilers or engines, placing wires in conduits, installing dynamos, putting up belts for machinery, installation of automatic sprinklers, covering steam pipes or boilers, installation of machinery not otherwise specified, installing electrical apparatus or fire alarm systems in buildings, house heating or ventilating systems.

Class 7. Steam railroads, logging railroads.

Class 8. Road making, street or other grading, concrete laying in street paving, asphalt laying.

Class 9. Ship or boat building with scaffolds, ship wrighting, ship or boat rigging, floating docks.

OPERATION (INCLUDING REPAIR WORK) OF

Class 10. Logging, saw mills, shingle mills, lath mills, masts and spars with or without machinery.

Class 12. Dredges, dry or floating docks.

Class 13. Electric light or power plants or systems,

steam heat or power plants or systems, electric systems not otherwise specified.

Class 14. Street railways.

Class 15. Telegraph systems, telephone systems.

Class 16. Coal mines.

Class 17. Quarries, stone crushing, mines other than coal.

Class 18. Blast furnaces, smelters, rolling mills.

Class 19. Gas works.

Class 20. Steamboats, tugs, ferries.

Class 21. Grain elevators.

Class 22. Laundries.

Class 23. Water works.

Class 24. Paper or pulp mills.

Class 25. Garbage works, fertilizer.

FACTORIES (USING POWER-DRIVEN MACHINERY).

Class 26. Stamping tin or metal.

Class 27. Bridge work, making steam shovels or dredges, tanks, water towers.

Class 28. Railroad car or locomotive making or repairing.

Class 29. Cooperage, staves, veneer, box, packing cases, sash (,) door or blinds, barrel, keg, pail, basket, tub, wood ware or wood fibre ware, kindling wood, excelsior, working in wood not otherwise specified.

Class 30. Asphalt.

Class 31. Cement, stone with or without machinery, building materials not otherwise specified.

Class 32. Canneries of fruits or vegetables.

Class 33. Canneries of fish or meat products.

Class 34. Iron, steel, copper, zinc, brass or lead articles or wares, hardware, boiler works, foundries, machine shops not otherwise specified.

Class 35. Tile, brick, terra cotta, fire clay, pottery, earthenware, porcelain ware.

Class 36. Peat fuel, brickettes.

Class 37. Breweries, bottling works.

Class 38. Cordage, working in wool, cloth, leather, paper, brush, rubber or textile not otherwise specified.

Class 39. Working in food stuffs, including oils, fruits, vegetables.

Class 40. Condensed milk, creameries.

Class 41. Printing, electrotyping, photo-engraving, engraving, lithographing, making jewelry.

Class 42. Stevedoring, longshoring, wharf operation.

Class 43. Stock yards, packing houses, making soap, tallow, lard, grease, tanneries.

Class 44. Artificial ice, refrigerating or cold storage plants.

Class 45. Theater stage employes.

Class 46. Fire works manufacturing, powder works.

Class 47. Creosoting works, pile treating works.

If a single establishment or work comprises several occupations listed in this section in different risk classes, the premium shall be computed according to the pay roll of each occupation if clearly separable, otherwise an average rate of premium shall be charged for the entire establishment, taking into consideration the number of employes and the relative hazards. If an employer besides employing workmen in extra hazardous employment shall also employ workmen in employments not extra hazardous the provisions of this act shall apply only to the extra hazardous departments and employments and the workmen employed therein. In computing the pay roll the entire compensation received by every workman employed in

extra hazardous employment shall be included, whether it be in the form of salary, wage, piece work, overtime, or any allowance in the way of profit-sharing, premium or otherwise, and whether payable in money, board, or otherwise.

Sec. 5. *Schedule of Awards.*

Each workman who shall be injured whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

COMPENSATION SCHEDULE.

(a) Where death results from the injury the expenses of burial shall be paid in all cases, not to exceed $75.00 in any case, and,

(1) If the workman leaves a widow or invalid widower, a monthly payment of $20.00 shall be made throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur; and the surviving spouse shall also receive $5.00 per month for each child of the deceased under the age of sixteen years at time of the occurrence of the injury until such minor child shall reach the age of sixteen years, but the total monthly payment under this paragraph (1) of subdivision (a) shall not exceed $35.00. Upon remarriage of a widow she shall receive, once and for all, a lump sum equal to twelve times her monthly allowance, viz., the sum of $240.00.

but the monthly payment for the child or children shall continue as before.

(2) If the workman leaves no wife or husband, but a child or children under the age of sixteen years, a monthly payment of $10.00 shall be made to each such child until such child shall reach the age of sixteen years, but the total monthly payment shall not exceed $35.00, and any deficit shall be deducted proportionately among the beneficiaries.

(3) If the workman leaves no widow, widower, or child under the age of sixteen years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty per cent of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed $20.00 per month. If any dependent is under the age of sixteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent shall reach the age of sixteen years. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

If the workman is under the age of twenty-one years and unmarried at the time of his death, the parents or parent of the workman shall receive $20.00 per month for each month after his death until the time at which he would have arrived at the age of twenty-one years.

(4) In the event a surviving spouse receiving monthly payments shall die, leaving a child or children under the age of sixteen years, the sum he or she shall be receiving on account of such child or children shall be thereafter, until such child shall arrive at the

age of sixteen years, paid to the child increased 100 per cent, but the total to all children shall not exceed the sum of thirty-five dollars per month.

(b) Permanent total disability means the loss of both legs or both arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

When permanent total disability results from the injury the workman shall receive monthly during the period of such disability:

(1) If unmarried at the time of the injury, the sum of $20.00.

(2) If the workman have a wife or invalid husband, but no child under the age of sixteen years, the sum of $25.00. If the husband is not an invalid, the monthly payment of $25.00 shall be reduced to $15.00.

(3) If the workman have a wife or husband and a child or children under the age of sixteen years, or, being a widow or widower, have any such child or children, the monthly payment provided in the preceding paragraph shall be increased by five dollars for each such child until such child shall arrive at the age of sixteen years, but the total monthly payment shall not exceed thirty-five dollars.

(c) If the injured workman die during the period of total disability, whatever the cause of death, leaving a widow, invalid widower, or child under the age of sixteen years, the surviving widow or invalid widower shall receive twenty dollars per month until death or remarriage, to be increased five dollars per month for each child under the age of sixteen years until such child shall arrive at the age of sixteen year; but if such child is or shall be without father or mother, such child shall receive ten dollars per month until arriving at the age of sixteen years. The

total combined monthly payment under this paragraph shall in no case exceed thirty-five dollars. Upon remarriage the payments on account of a child or children shall continue as before to the child or children.

(d) When the total disability is only temporary, the schedule of payment contained in paragraphs (1) (2) and (3) of the foregoing subdivision (d) shall apply so long as the total disability shall continue, increased 50 per cent for the first six months of such continuance, but in no case shall the increase operate to make the monthly payment exceed sixty per cent of the monthly wage (the daily wage multiplied by twenty-six) the workman was receiving at the time of his injury. As soon as recovery is so complete that the present earning power of the workman, at any kind of work, is restored to that existing at the time of the occurrence of the injury the payments shall cease. If and so long as the present earning power is only partially restored the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable out of the accident fund unless the loss of earning power shall exceed five per cent.

(e) For every case of injury resulting in death or permanent total disability it shall be the duty of the department to forthwith notify the state treasurer, and he shall set apart out of the accident fund a sum of money for the case, to be known as the estimated lump value of the monthly payments provided for it, to be calculated upon the theory that a monthly payment of twenty dollars, to a person thirty years of age, is equal to a lump sum payment, according to the expectancy of life as fixed by the American Mortality Table, of four thousand dollars, but the total in no case to exceed the sum of four thousand dollars. The state treasurer shall invest said sum at interest in the

class of securities provided by law for the investment of the permanent school fund, and out of the same and its earnings shall be paid the monthly installments and any lump sum payment then or thereafter arranged for the case. Any deficiency shall be made good out of, and any balance or overplus shall revert to the accident fund. The state treasurer shall keep accurate account of all such segregations of the accident fund, and may borrow from the main fund to meet monthly payments pending conversion into cash of any security, and in such case shall repay such temporary loan out of the cash realized from the security.

(f) Permanent partial disability means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments are severed, or any other injury known in surgery to be permanent partial disability. For any permanent partial disability resulting from an injury, the workman shall receive compensation in a lump sum in an amount equal to the extent of the injury, to be decided in the first instance by the department, but not in any case to exceed the sum of $1,500.00. The loss of one major arm at or above the elbow shall be deemed the maximum permanent partial disability. Compensation for any other permanent partial disability shall be in the proportion which the extent of such disability shall bear to the said maximum. If the injured workman be under the age of twenty-one years and unmarried, the parents or parent shall also receive a lump sum payment equal to ten per cent of the amount awarded the minor workman.

(g) Should a further accident occur to a workman already receiving a monthly payment under this section for a temporary disability, or who has been previously the recipient of a lump sum payment under

this act, his future compensation shall be adjusted according to the other provisions of this section and with regard to the combined effect of his injuries, and his past receipt of money under this act.

(h) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated in any case the department may, upon the application of the beneficiary or upon its own motion, readjust for future application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payments.

(i) A husband or wife of an injured workman, living in a state of abandonment for more than one year at the time of the injury or subsequently, shall not be a beneficiary under this act.

(j) If a beneficiary shall reside or remove out of the state the department may, in its discretion, convert any monthly payments provided for such case into a lump sum payment (not in any case to exceed $4,000.00) upon the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of $20.00 to a person thirty years of age is worth $4,000.00, or with the consent of the beneficiary, for a smaller sum.

(k) Any court review under this section shall be initiated in the county where the workman resides or resided at the time of the injury, or in which the injury occurred.

Sec. 6. *Intentional Injuries—Status of Minors.*

If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, neither the workman nor the widow, widower, child or dependent of the workman

shall receive any payment whatsoever out of the accident fund. If injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the workman, the widow, widower, child or dependent of the workman shall have the privilege to take under this act and also have cause of action against the employer, as if this act had not been enacted, for any excess of damage over the amount received or receivable under this act.

A minor working at an age legally permitted under the laws of this state shall be deemed sui juris for the purpose of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman except as expressly provided in this act, but in the event of a lump sum payment becoming due under this act to such minor workman, the management of the sum shall be within the probate jurisdiction of the courts the same as other property of minors.

Sec. 7. *Conversion into Lump Sum Payment.* In case of death or permanent total disability the monthly payment provided may be converted, in whole or in part, into a lump sum payment (not in any case to exceed $4,000.00) on the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of $20.00 to a person thirty years of age is worth the sum of $4,000.00, in which event the monthly payment shall cease in whole or in part accordingly or proportionately. Such conversion may only be made after the happening of the injury and upon the written application of the beneficiary (in case of minor children, the application may be by either parent) to the department, and shall rest in the discretion of the department. Within the rule aforesaid the amount and value of the lump sum pay-

ment may be agreed upon between the department and the beneficiary.

Sec. 8. *Defaulting Employers.*

If any employer shall default in any payment to the accident fund hereinbefore in this act required, the sum due shall be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In respect to any injury happening to any of his workmen during the period of any default in the payment of any premium under section 4, the defaulting employer shall not, if such default be after demand for payment, be entitled to the benefits of this act, but shall be liable to suit by the injured workman (or the husband, wife, child or dependent of such workman in case death result from the accident), as he would have been prior to the passage of this act.

In case the recovery actually collected in such suit shall equal or exceed the compensation to which the plaintiff therein would be entitled under this act, the plaintiff shall not be paid anything out of the accident fund; if the said amount shall be less than such compensation under this act, the accident fund shall contribute the amount of the deficiency. The person so entitled under the provisions of this section to sue shall have the choice (to be exercised before suit) of proceeding by suit or taking under this act. If such person shall take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the accident fund. In any suit brought upon such cause of action the defense of fellow-servant and assumption of risk shall be inadmissible, and the doctrine of comparative negligence shall obtain. Any such cause of action assigned to the state may be prosecuted or compromised by the depart-

ment in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

Sec. 9. *Employer's Responsibility for Safeguard.* If any workman shall be injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance, or any departmental regulation under any statute, or be, at the time of the injury, of less than the maximum age prescribed by law for the employment of a minor in the occupation in which he shall be engaged when injured, the employer shall, within ten days after demand therefor by the department, pay into the accident fund, in addition to the same required by section 4 to be paid:

(a) In case the consequent payment to the workman out of the accident fund be a lump sum, a sum equal to fifty per cent of that amount.

(b) In case the consequent payment to the workman be payable in monthly payments, a sum equal to fifty per cent of the lump value of such monthly payment, estimated in accordance with the rule stated in section 7.

The foregoing provisions of this act shall not apply to the employer if the absence of such guard or protection be due to the removal thereof by the injured workman himself or with his knowledge by any of his fellow-workmen, unless such removal be by order or direction of the employer or superintendent or foreman of the employer, or anyone placed by the employer in control or direction of such workman. If the removal of such guard or protection be by the workman himself or with his consent by any of his

fellow-workmen, unless done by order or direction of the employer or the superintendent or foreman of the employer, or any one placed by the employer in control, or direction of such workman, the schedule of compensation provided in section 5 shall be reduced ten per cent for the individual case of such workman.

Sec. 10. *Exemption of Awards.*

No money paid or payable under this act out of the accident fund shall, prior to issuance and delivery of the warrant therefor, be capable of being assigned, charged, nor ever be taken in execution or attached or garnished, nor shall the same pass to any other person by operation of law. Any such assignment or charge shall be void.

Sec. 11. *Nonwaiver of Act by Contract.*

No employer or workman shall exempt himself from the burden or waive the benefits of this act by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be pro tanto void.

Sec. 12. *Filing Claim for Compensation.*

(a) Where a workman is entitled to compensation under this act he shall file with the department, his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman.

(b) Where death results from injury the parties entitled to compensation under this act, or some one

in their behalf, shall make application for the same to the department, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this act, certificates of attending physician, if any, and such other proof as required by the rules of the department.

(c) If change of circumstance warrant an increase or rearrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor.

(d) No application shall be valid or claim thereunder enforceable unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

Sec. 13. *Medical Examination.*

Any workman entitled to receive compensation under this act is required, if requested by the department, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the department. If the workman refuses to submit to any such examination, or obstructs the same, his rights to monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

Sec. 14. *Notice of Accident.*

Whenever any accident occurs to any workman it shall be the duty of the employer to at once report such accident and the injury resulting therefrom to the department, and also to any local representative of the department. Such report shall state:

1. The time, cause and nature of the accident and

injuries, and the probable duration of the injury resulting therefrom.

2. Whether the accident arose out of or in the course of the injured person's employment.

3. Any other matters the rules and regulations of the department may prescribe.

Sec. 15. *Inspection of Employer's Books.*

The books, records and pay-rolls of the employer pertinent to the administration of this act shall always be open to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the pay-roll, the men employed, and such other information as may be necessary for the department and its management under this act. Refusal on the part of the employer to submit said books, records and pay-rolls for such inspection to any member of the commission, or any assistant presenting written authority from the commission, shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the state and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.

Sec. 16. *Penalty for Misrepresentation as to Pay-roll.*

Any employer who shall misrepresent to the department the amount of pay-roll upon which the premium under this act is based shall be liable to the state in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability to the state under this section shall be enforced in a civil action in the name of the state. All sums collected under this section shall be paid into the accident fund.

Sec. 17. *Public and Contract Work.*

Whenever the state, county or any municipal corporation shall engage in any extra hazardous work in which workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the state, county or municipality. If said work is being done by contract, the pay-roll of the contractor and the subcontractor shall be the basis of computation, and in the case of contract work consuming less than one year in performance the required payment into the accident fund shall be based upon the total pay-roll. The contractor and any subcontractor shall be subject to the provisions of the act, and the state for its general fund, the county or municipal corporation shall be entitled to collect from the contractor the full amount payable to the accident fund, and the contractor, in turn shall be entitled to collect from the subcontractor his proportionate amount of the payment. The provisions of this section shall apply to all extrahazardous work done by contract, except that in private work the contractor shall be responsible, primarily and directly, to the accident fund for the proper percentage of the total payroll of the work and the owner of the property affected by the contract shall be surety for such payments. Whenever and so long as, by state law, city charter or municipal ordinance, provision is made for municipal employes injured in the course of employment, such employes shall not be entitled to the benefits of this act and shall not be included in the payroll of the municipality under this act.

Sec. 18. *Interstate Commerce.*

The provisions of this act shall apply to employers and workmen engaged in intrastate and also in interstate or foreign commerce, for whom a rule of liability

or method of compensation has been or may be established by the Congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that any such employer and any of his workmen working only in this state may, with the approval of the department, and so far as not forbidden by any act of Congress, voluntarily accept the provisions of this act by filing written acceptances with the department. Such acceptances, when filed with and approved by the department, shall subject the acceptors irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Payment of premium shall be on the basis of the payroll of the workmen who accept as aforesaid.

Sec. 19. *Elective Adoption of Act.*

Any employer and his employes engaged in works not extrahazardous may, by their joint election, filed with the department, accept the provisions of this act, and such acceptances, when approved by the department, shall subject them irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Ninety per cent of the minimum rate specified in section 4 shall be applicable to such case until otherwise provided by law.

Sec. 20. *Court Review.*

Any employer, workman, beneficiary, or person feeling aggrieved at any decision of the department affecting his interests under this act may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county of his residence (except as otherwise provided in subdivision (1) of section numbered 5) in so far

as such decision rests upon questions of fact, or of the proper application of the provisions of this act, it being the intent that matters resting in the discretion of the department shall not be subject to review. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal shall have been served by mail or personally upon some member of the commission within twenty days following the rendition of the decision appealed from and communication thereof to the person affected thereby. No bond shall be required, except that an appeal by the employer from a decision of the department under section 9 shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay. The calling of a jury shall rest in the discretion of the court except that in cases arising under sections 9, 15 and 16 either party shall be entitled to a jury trial upon demand. It shall be unlawful for any attorney engaged in any such appeal to charge or receive any fee therein in excess of a reasonable fee, to be fixed by the court in the case, and, if the decision of the department shall be reversed or modified, such fee and the fees of medical and other witnesses and the costs shall be payable out of the administration fund, if the accident fund is affected by the litigation. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal adviser of the department and shall represent it in all proceedings, whenever so requested by any of the commissioners. In all court proceedings under or pursuant to this act

the decision of the department shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.

Sec. 21. *Creation of Department.*

The administration of this act is imposed upon a department, to be known as the Industrial Insurance Department, to consist of three commissioners to be appointed by the governor. One of them shall hold office for the first two years, another for the first four years, and another for the first six years following the passage and approval of this act. Thereafter the term shall be six years. Each commissioner shall hold until his successor shall be appointed and shall have qualified. A decision of any question arising under this act concurred in by two of the commissioners shall be the decision of the department. The governor may at any time remove any commissioner from office in his discretion, but within ten days following any such removal the governor shall file in the office of the secretary of state a statement of his reasons therefor. The commission shall select one of their members as chairman. The main office of the commission shall be at the state capitol, but branch offices may be established at other places in the state. Each member of the commission shall have power to issue subpoenas requiring the attendance of witnesses and the production of books and documents.

Sec. 22. *Salary of Commissioners.*

The salary of each of the commissioners shall be thirty-six hundred dollars per annum, and he shall be allowed his actual and necessary traveling and incidental expenses; and any assistant to the commissioners shall be paid for each full day's service rendered by him, his actual and necessary traveling expenses and

such compensation as the commission may deem proper, not to exceed six dollars per day to an auditor, or five dollars per day to any other assistant.

Sec. 23. *Deputies and Assistants.*

The commissioners may appoint a sufficient number of auditors and assistants to aid them in the administration of this act, at an expense not to exceed $5,000.00 per month. They may employ one or more physicians in each county for the purpose of official medical examinations, whose compensation shall be limited to five dollars for each examination and report therein. They may procure such record books as they may deem necessary for the record of the financial transactions and statistical data of the department, and the necessary documents, forms and blanks. They may establish and require all employers to install and maintain a uniform form of payroll.

Sec. 24. *Conduct, Management and Supervision of Department.*

The commission shall, in accordance with the provisions of this act:

(1) Establish and promulgate rules governing the administration of this act.

(2) Ascertain and establish the amounts to be paid into and out of the accident fund.

(3) Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency.

(4) Supervise the medical, surgical and hospital treatment to the intent that same may be in all cases suitable and wholesome.

(5) Issue proper receipts for moneys received, and certificates for benefits accrued and accruing.

(6) Investigate the cause of all serious injuries and

report to the governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the department.

(7) Compile and preserve statistics showing the number of accidents occurring in the establishment or works of each employer, the liabilities and expenditures of the accident fund on account of, and the premium collected from the same, and hospital charges and expenses.

(8) Make annual reports to the governor (one of them not more than sixty nor less than thirty days prior to each regular session of the legislature) of the workings of the department, and showing the financial status and the outstanding obligations of the accident fund, and the statistics aforesaid.

Sec. 25. *Medical Witnesses.*

Upon the appeal of any workman from any decision of the department affecting the extent of his injuries or the progress of the same, the court may appoint not to exceed three physicians to examine the physical condition of the appellant, who shall make to the court their report thereon, and they may be interrogated before the court by or on behalf of the appellant in relation to the same. The fee of each shall be fixed by the court, but shall not exceed ten dollars per day each.

Sec. 26. *Disbursement of Funds.*

Disbursement out of the funds shall be made only upon warrants drawn by the state auditor upon vouchers therefor transmitted to him by the department and audited by him. The state treasurer shall pay every warrant out of the fund upon which it is drawn. If, at any time, there shall not be sufficient money in the fund on which any such warrant shall have been

drawn wherewith to pay the same, the employer on account of whose workman it was that the warrant was drawn shall pay the same, and he shall be credited upon his next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable, and if the amount of the credit shall exceed the amount of the contribution, he shall have a warrant upon the same fund for the excess, and if any such warrant shall not be so paid, it shall remain, nevertheless, payable out of the fund. The state treasurer shall to such extent as shall appear to him to be advisable keep the moneys of the unsegregated portion of the accident fund invested at interest in the class of securities provided by law for the investment of the permanent school fund. The state treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the accident fund, but all the provisions of an act approved February 21, 1907, entitled "An act to provide for state depositories and to regulate the deposits of state moneys therein," shall be applied to said moneys and the handling thereof by the state treasurer.

Sec. 27. *Test of Invalidity of Act.*

If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his workman, or if any workman shall be adjudicated to be outside the lawful scope of this act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of section 4 of this act for the creation of the accident fund, or the provisions of this act

making the compensation to the workman provided in it exclusive of any other remedy on the part of the workman shall be held invalid the entire act shall be thereby invalidated except the provisions of section 31, and an accounting according to the justice of the case shall be had of moneys received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any other part thereof.

Sec. 28. *Statute of Limitations Saved.*

If the provisions of this act relative to compensation for injuries to or death of workmen become invalid because of any adjudication, or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this act by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death: *Provided,* That such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the accident fund to the workman on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by section 4, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed.

Section 29. *Appropriations.*

There is hereby appropriated out of the state treasury the sum of one hundred and fifty thousand dollars,

or so much thereof as may be necessary, to be known as the administration fund, out of which the salaries, traveling and office expenses of the department shall be paid, and also all other expenses of the administration of the accident fund; and there is hereby appropriated out of the accident fund for the purpose to which said fund is applicable the sum of $1,500,000.00, or so much thereof as shall be necessary for the purposes of this act.

Sec. 30. *Safeguard Regulations Preserved.* Nothing in this act contained shall repeal any existing law providing for the installation or maintenance of any device, means or method for the prevention of accidents in extrahazardous work or for a penalty or punishment for failure to install or maintain any such protective device, means or method, but sections 8, 9, and 10 of the act approved March 6, 1905, entitled: "An act providing for the protection and health of employes in factories, mills or workshops, where machinery is used, and providing for suits to recover damages sustained by the violation thereof, and prescribing a punishment for the violation thereof and repealing an act entitled, 'An act providing for the protection of employes in factories, mills, or workshops where machinery is used, and providing for the punishment of the violation thereof, approved March 6, 1903,' and repealing all other acts or parts of acts in conflict herewith," are hereby repealed, except as to any cause of action which shall have accrued thereunder prior to October 1, 1911.

Sec. 31. *Distribution of Funds in Case of Repeal.* If this act shall be hereafter repealed, all moneys which are in the accident fund at the time of the repeal shall be subject to such disposition as may be

provided by the legislature and in default of such legislative provision distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

Sec. 32. *Saving Clause.*

This act shall not affect any action pending or cause of action existing on the 30th day of September, 1911.

Passed by the House February 23, 1911.

Passed by the Senate March 7, 1911.

Approved by the Governor March 14, 1911.

SUPREME COURT OF WASHINGTON.

Nov. 28, 1913.

Peet v. Mills.

Opinion.

MORRIS, J. By this appeal we are again called upon to review the Workmen's Compensation Act of 1911 (Laws 1911, c. 74), under appellant's contention that the act is applicable only where recovery is sought upon the ground of negligence of the employer. The facts upon which appellant predicates his right of action are these: On January 22, 1912, while in the employ of the Seattle, Renton & Southern Railway Company as motorman he was injured in a collision between two of the railway company's trains. Respondent was then the president of the railway company, and it is sought to hold him personally responsible for the injuries because of the allegations that, when he assumed the control and management of the railway company, it was equipped with a block signal system for use in foggy weather, which respondent negligently failed to operate; and that, when complaint was made by the train operators of the great danger of operating the trains without the aid of the block signals, a promise was made by respondent to have the block signals working during foggy weather, which promise respondent failed to keep, and as a consequence of his negligence in so failing appellant was injured. The court below sustained a demurrer to the complaint, and, appellant electing to stand upon his complaint, the action was dismissed, and this appeal taken.

(1) It is the contention of the appellant, conceding he was at the time of his injury a "workman" within the meaning of the act, and that as such he has no right of action against the railway company, his employer, that the act in no way infringes upon his right

of action against respondent because: (1) The act itself is in derogation of the common law, and, since it does not expressly abolish the doctrine of negligence as a ground of recovery except as against employers, it should be strictly construed; (2) even though it be admitted that the body of the act is in itself sufficient to abolish negligence as a ground of recovery of damages against all persons within the scope of the act, the title to the act is not broad enough to include such abolition as against anyone except employers. Our recent discussion of the Workmen's Compensation Act of 1911, as found in *State ex rel. Davis-Smith Co. v. Clausen*, 65 Wash. 156, 117 Pac. 1101, 37 L. R. A. (N. S.) 466, and *State v. Mountain Timber Co.*, 135 Pac. 645, renders unnecessary any further review of the act except in so far as may be necessary to notice the contentions here raised. The act contains its own declaration of legislative policy, in reciting in section 1 that the common law system in dealing with actions by employes against employers for injuries received in hazardous employments is inconsistent with the modern industrial conditions, uneconomic, unwise, and unfair, and that as the welfare of the state depends upon its industries, and even more upon the welfare of its workingmen, the state of Washington in the exercise of its police and sovereign power declares its policy to withdraw all phases of the premises from private controversy, regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation except as provided in the act, "and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished except as in this act provided."

(2, 3) It is a well-accepted rule that remedial statutes, seeking the correction of recognized errors and

abuses in introducing some new regulation for the advancement of the public welfare, should be construed with regard to the former law and the defects or evils sought to be cured and the remedy provided; that in so construing such statutes they should be interpreted liberally, to the end that the purpose of the Legislature in suppressing the mischief and advancing the remedy to be promoted, even to the inclusion of cases with the reason, although outside the letter, of the statute (36 Cyc. 1173); and that in construing the statute courts will look to the old law, the mischief sought to be abolished, and the remedy proposed. *State v. Stewart*, 52 Wash. 61, 100 Pac. 153, 17 Ann. Cas. 411. Starting with these basic principles, the conclusion is evident that, in the enactment of this new law, the Legislature declared it to be the policy of this state that every hazardous industry within the purview of the act should bear the burden arising out of injuries to its employes; and that it was the further policy of the state to do away with the recognized evils attaching to the remedies under existing forms of law and to substitute a new remedy that should be ample, full, and complete, reaching every injury sustained by any workman while employed in any such industry, regardless of the cause of the injury or the negligence to which it might be attributed. We can conceive of no language the Legislature might have employed that would make its purpose and intent more ascertainable than that made use of in the first section of the act. To say with appellant that the intent of the act is limited to the abolishment of negligence as a ground of action against an employer only is to overlook and read out of the act and its declaration of principles the economic thought sought to be crystalized into law, that the industry itself was the primal cause of the injury and, as such, should be made to

bear its burdens. The employer and employe as distinctive producing causes are lost sight of in the greater vision, that the industry itself is the great producing cause, and that the cost of an injury suffered in any industry is just as much a part of the cost of production as the tools, machinery, or material that enter into that production, recognizing no distinction between the injury and destruction of machinery and the injury and destruction of men in so far as each is a proper charge against the cost of production. The Legislature in this act was dealing, not so much with causes of action and remedies, as with this great economic principle that has obtained recognition in these later years, and it sought in the use of language it deemed apt to embody this principle into law. That in so doing the legislative mind was intent upon the abolishment of all causes of action that may have theretofore existed, irrespective of the persons in favor of whom or against whom such right might have existed, is equally clear from the language of section 5 of the act, containing a schedule of awards, and providing that each workman injured in the course of his employment should receive certain compensation, and "such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever." Referring again to section 1 of the act and the declaration of its exercise of police power by the state, to the end that it may advance the welfare of its citizens injured in any hazardous undertaking, we find this expression of intention: "* * * All phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extrahazardous work and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise pro-

vided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished." For these reasons we are of the opinion that the compensation provided by the act in case of injury to any workman in any hazardous occupation was intended to be exclusive of every other remedy, and that all causes of action theretofore existing, except as they are saved by the provisos of the act, are done away with.

(4) Upon the second point we think there is no room for argument. The first clause of the title indicates that it is an act relating to the compensation of injured workmen in any industry of the state, and the employment of the language further on in the title, "abolishing the doctrine of negligence as a ground for recovery of damages against employers," is indicative of the evil the act seeks to overcome rather than the new remedy created. The title is plainly broad enough to indicate that the act is intended to furnish the only compensation to be allowed workmen subsequent to its becoming law, and as such clearly includes any and all rights of action theretofore existing in which such compensation might have been obtained.

The second point is therefore overruled, and the judgment affirmed.

Crow, C. J., and Mount, Parker and Fullerton, J. J., concur.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 2287.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, A MINOR, CATHERINE MEESE, A MINOR, LIZZIE MEESE, A MINOR, WILLIE MEESE, A MINOR, BENNIE MEESE, A MINOR, by their Guardian Ad Litem, MARY A. MEESE,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a corporation,

Defendant in Error.

Opinion.

Before GILBERT, ROSS and MORROW, Circuit Judges.

MORROW, Circuit Judge, after stating the facts, delivered the opinion of the Court:

1. The question on this appeal arises out of an act of the Legislature of the State of Washington, approved March 14, 1911, known as and designated the "Workmen's Compensation Act" (Chapter 74, Session Laws of the State of Washington, p. 345), relating to the compensation of workmen in extrahazardous employments in that state.

The constitutionality of the act is not attacked by either party, and the fact that the death of the decedent was due to the wrongful act and negligence of the Railway Company is not denied by that company. But the position taken by the plaintiffs in error (the plaintiffs in the court below), and controverted by the defendant in error, the Northern Pacific Railway Com-

pany, is, that the Workmen's Compensation Act of the State of Washington does not and never was intended to deny to or take from the heirs or personal representatives of a deceased person their right of action for damages against the person or corporation whose wrongful act caused the death of such deceased person. The contention of the plaintiffs in error is: That the death of Benjamin Meese having been caused by the wrongful act and negligence of the Northern Pacific Railway Company, his heirs, the plaintiffs in error herein, are not barred by the provisions of the Workmen's Compensation Act from maintaining their statutory right of action against the Railway Company, by reason of the fact that at the time the decedent was killed he was in the employ of the Seattle Brewing Company, and acting in the discharge of his duties as an employe of that company.

The intent of the legislature of the State of Washington with respect to the scope and purview of the Compensation Act must be ascertained by a construction of the act as a whole, keeping well in view the evils which, as declared by the act itself, it was intended to remedy.

The primary title of the act is as follows:

"Relating to compensation of injured workmen."

The secondary title is as follows:

"An act relating to the compensation of injured workmen in our industries, and the compensation to their dependents where such injuries result in death, creating an industrial insurance department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the non-observ-

ance of regulations for the prevention of such injuries and for violation of its provisions, asserting and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of jurisdiction of such controversies, and repealing sections 6594, 6595 and 6596 of Remington and Ballinger's Annotated Codes and Statutes of Washington, relating to employes in factories, mills or workshops where machinery is used, actions for the recovery of damages and prescribing a punishment for the violation thereof."

The act contains its own declaration of legislative policy in the following specific terms:

"Section 1: The common law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents, is hereby provided regardless of questions of fault, and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of actions for such

personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided."

Section 2 contains an enumeration of the extra hazardous occupations or works to which the act is intended to apply.

Section 3 contains particular definitions of the terms employed in the act.

Sections 4 to 19, inclusive, set forth the schedules of contribution and compensation of the act, and provide for the giving of notice under the act, and the methods of enforcement of the act.

Section 20 provides that any employer, workman, beneficiary or person feeling aggrieved at any decision of the department created by the act, affecting his interests under the act, may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county of his residence.

Sections 21 to 26, inclusive, create an Industrial Insurance Department, and impose the administration of said act upon that department.

By sections 27 and 28 it is provided, that if any employer shall be adjudged to be outside the lawful scope of the act, the act shall not apply to him or his workmen, and that if the provisions of the act relative to compensation for injuries to or death of workmen become invalid because of any adjudication, or be repealed, such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death.

Section 29 appropriates the sum of $1,500,000.00, or so much thereof as shall be necessary, for the purposes of the act.

In Section 30 it is provided that Sections 8, 9 and 10

of the act approved March 6, 1905, entitled "An act providing for the protection and health of employes in factories, mills or workshops, where machinery is used, and providing for suits to recover damages sustained by the violation thereof, and prescribing a punishment for the violation thereof." (Sections 6594, 6595 and 6596 of Remington and Ballinger's Annotated Codes and Statutes of Washington, referred to in the title of the act, "and repealing an act entitled, 'An act providing for the protection of employes in factories, mills or workshops, where machinery is used, and providing for the punishment for the violation thereof, approved March 6, 1903,' and repealing all other acts and parts of acts in conflict therewith" shall be repealed, except as to any cause of action which shall have accrued thereunder prior to October 1, 1911.

Section 31 relates to the distribution of the funds in case of a repeal of the act.

Section 32 provides that the act shall not affect any action pending or cause of action existing on the 30th day of September, 1911.

With respect to the title of the act it is to be observed that it relates to the compensation of injured workmen in industries in the State of Washington, and the compensation to their dependents where such injuries result in death; but it does not purport to relate to the statutory right of action for damages given to heirs or personal representatives of a deceased person, when the death of such person is caused by the wrongful act or neglect of another. Again, the title recites that the act contains provisions abolishing the doctrine of negligence as a ground of recovery of damages against employers, but it does not recite that the act contains provisions abolishing the statutory right of action in favor of the heirs and per-

sonal representatives of a deceased person, where the death of such person is caused by the wrongful act or neglect of another, not an employer; and the act does not in fact abolish such right of action in express terms. The title recites that the act abolishes certain sections of Remington and Ballinger's Annotated Codes and Statutes of Washington; but it does not recite that the act repeals Sections 183 and 194 of that Compilation of Codes and Statutes, under which this action was brought, and the act does not in fact in express terms repeal either of those sections of the law. These two sections, so far as they relate to this case, provide as follows:

"Section 183 * * * * * When the death of a person is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death."

"Section 194: No action for a personal injury to any person occasioning his death shall abate, nor shall such right of action determine, by reason of such death, if he have a wife or child living; * * * * * but such action may be prosecuted or commenced and prosecuted in favor of such wife or in favor of the wife and children * * * * *."

With respect to the declaration of policy contained in the first section of the act, it is to be noticed that it is specifically directed against "the common law system governing the remedy of workmen against employers for injuries in hazardous work." The present action is not one arising under the common law system, and it is not against the employer of the decedent. Th plaintiffs in error, as the wife and children of the decedent, had no right of action against the defendant at common law, whether the defendant was an employer or a third person not an employer. Their

right of action is purely statutory, and is based upon Sections 183 and 194 of the above mentioned Codes and Statutes of Washington.

The question to be determined is this: Did the compensation act repeal these sections of the prior statute law? It did not by any express provisions of the act. Did it do it by implication?

The contention of the defendant in error is that these sections have been repealed, so far as plaintiffs' right of action against the defendant in error is concerned, and that the plaintiffs must recover, if at all, under the compensation act. This contention is based, first, upon the declaration contained in the first section of the compensation act concerning the exercise of the police power of the state. The declaration is "that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen injured in extra hazardous work, and their families and dependents, is hereby provided, regardless of questions of fault, and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries, and all jurisidiction of the courts of the state over such causes are hereby abolished, except as in this act provided." The scope of this provision of the act is clearly limited primarily by the word "premises." All phases of the "*premises*" are withdrawn from private controversy. What are the "*premises*"? The "*premises*" are the matters stated in the context, namely: "the *common law* system governing the remedy of *workmen against employers* for injuries received in hazardous work." This withdrawal does not include the general liability for a personal tort, nor does it include specifically a right of action under the state statute for injuries resulting in death caused by

the wrongful act or neglect of another not an employer. The maxim *noscitur a sociis* applies here and determines the proper interpretation of the language. (*Kelley vs. City of Madison*, 43 Wis. 638; 28 Am. Rep. 576; *McGaffin vs. City of Cohoes*, 74 N. Y. 387, 30 Am. Rep. 307.)

The defendant claims further that its contention is supported by the proviso found in Section 3 of the act, relating to the definition of words used in the act, "that if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section"; but this proviso is limited in express terms to "an injury to a workman occurring away from the plant of his employer." If the injury to a workman occurs at the plant of his employer the proviso does not apply. In the present case the injury did not occur to the workman away from the plant of his employer. It occurred while he was in the employ of his employer and at the plant of his employer. The fact that the injury was due to the negligence and wrong of another not in the same employ is not sufficient under this section to bring the case within the provisions of the compensation act; but it is not necessary for us to decide that question. The question here is, have the plaintiffs in error a remedy under the prior statute? They have if that statute has not been repealed by the compensation act. It is not claimed that it has been repealed by that act in express terms. Can it be said that it has been repealed by implication? It is plain that it has not, when we consider that by the compensation act it is provided

that if a workman is injured away from the plant of his employer by the negligence or wrong of another not in the same employ, and the injury results in the death of the workman, his widow, children or dependents may elect whether to take under the compensation act, or seek a remedy against such other. What that remedy against the other is, is clearly indicated by the remainder of the section pointing to a right of action under the prior statute. The remainder of the section is as follows:

" * * * * * If he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the accident fund; if the other choice be made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the state may be prosecuted or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department."

A cause of action "against such other" which "shall be assigned to the state for the benefit of the accident fund" must be based upon the prior statute. If based upon the prior statute that statute was not repealed, but continued in force.

It is further contended by the defendant in error, that the first clause of Section 5 of the compensation act provides a sure and certain remedy to workmen in case of injury, or their dependents in case of death, regardless of the right of action against any person whomsoever, and takes away such right of action. The clause is as follows:

"Each workman who shall be injured whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedules, and except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever."

The last words of this clause, taken alone, might be held to be sufficiently broad to justify the plaintiffs in error in claiming out of the accident fund the compensation provided in the act, and if such claim were made and allowed it would undoubtedly "be in lieu of any and all rights of action whatsoever, against any person whomsoever." But further than this we do not think the clause can be extended. The clause does not abolish or take away the right of action. It merely provides that an award under the Act "shall be in lieu of any and all rights of action whatsoever against any person whomsoever."

The conclusion we have reached is, that the repeal of sections 183 and 194 of Remington and Ballinger's Compilation of the Codes and Statutes of Washington is not within the title of the compensation act; that the repeal of these sections is not within the declared policy of the compensation act as applied to the facts charged in the complaint in this case; that these sections have not been repealed by the compensation act either expressly or by implication; but, on the contrary, the implication to be drawn from the provisions of the statute is that these sections have not been repealed. These conclusions are abundantly supported by the general rules governing the construction of statutes.

2. It is a fundamental rule in the construction of a

statute that its purview can be no broader than its title, or, as stated by Sutherland, in his work on Statutory Construction, the title of the act must agree with the act itself, by expressing its subject; the title will fix bounds to be purview, for the act cannot exceed the title subject nor be contrary to it.

"An act will not be so construed as to extend its operation beyond the purpose expressed in the title. It is not enough that the act embraces but a single subject or object, and that all its parts are germane; the title must express that subject, and comprehensively enough to include all the provisions in the body of the act. The unity and compass of the subject must, therefore, always be considered with reference to both title and purview. The unity must be sought, too, in the ultimate end which the act proposes to accomplish, rather than in the details leading to that end. * * * * * The title cannot be enlarged by construction when too narrow to cover all the provisions in the enacting part, nor can the purview be contracted by construction to fit the title." (Lewis' Sutherland Statutory Construction, Sec. 120).

"The title of an act defines its scope, it can contain no valid provision beyond the range of the subject there stated." (Ibid., Sec. 145).

In the case of *Diana Shooting Club vs. Lamereux*, 89 N. W. 880, the Supreme Court of Wisconsin, applying the above rule to the case then under consideration, said:

"When one reading a bill, with the full scope of the title thereto in mind, comes upon provisions which he could not reasonably have anticipated because of their being in no way suggested by the title in any reasonable view of it, they are not constitutionally covered thereby. But in applying that rule, this other rule, which has been universally adopted, must be kept in

mind: The statement of a subject includes, by reasonable inference, all those things which will or may facilitate the accomplishment thereof."

We are not asked in the present case to give effect to some clause of the act not embraced in the title (for, as we have observed, the act contains no provisions respecting injuries received by an employe in the course of his employment and at the plant of his employer, occasioned by the wrongful act and negligence of another not in the same employ and not connected in any way with the employe or with the employer); but we are asked to read into the statute under consideration, by construction, a meaning and an extent not covered by or included within the title.

We are of opinion that there is nothing in the title of the act which by direct words, or by any fair and reasonable intendment or inference, can be construed to include within the scope of the act, and, therefore, to deny to the plaintiffs in error in this case, a right of action of the nature of that asserted by them, or which can be construed as depriving the courts of jurisdiction of a controversy in the nature of the one now before this court.

3. It will be noted further that there are expressly designated in the title of the act under consideration, certain sections of Remington and Ballinger's Annotated Codes and Statutes of the State of Washington, to wit: Sections 6594, 6595 and 6596 thereof, which are by said act expressly repealed. But the very obvious purpose of the act (if the interpretation insisted upon by the defendant in error be the correct one), would be to repeal, in addition to the sections expressly enumerated, Sections 183 and 194, providing for a right of action and the survival of a right of action in favor of the heirs or personal representatives of decedent. But the express repeal of certain acts im-

plies an intent not to repeal other sections. As said by the Supreme Court of New York in the case of *Bowen vs. Lease*, 5 Hill, 226:

"The invariable rule of construction in respect to the repealing of statutes by implication is, that the earliest act remains in force, unless the two are manifestly inconsistent with and repugnant to each other; or unless in the latest act some express notice is taken of the former, plainly indicating an intention to abrogate it. As laws are presumed to be passed with deliberation, and with full knowledge of all existing ones on the same subject, it is but reasonable to conclude that the legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable."

Furthermore, if it was the intent of the legislature to repeal the former act, that intent should have been clearly expressed.

"There can be no intent of a statute not expressed in its words. While the object of all construction, and the purpose of all rules of interpretation is to ascertain the legislative intent, and while, in construing a particular part of a statute, the whole act may be regarded, and all other acts bearing upon the subject, and all extraneous circumstances which the legislature may be supposed to have had in mind, may be properly taken into consideration, yet the intent which is finally arrived at must be an intent consistent with, and fairly expressed by, the words of the statute themselves. * * * * * The intent to be ascertained and enforced is the intent expressed in the words of the statute, read in the light of the constitution and the fundamental maxims of the common law, and not an intent based upon conjecture or derived from external considera-

tions." (Sutherland, Statutory Construction, Sec. 388.)

In Section 499 of the work of the same learned author, it is said:

"It is presumed that the legislature does not intend to make any change in the existing law beyond what is expressly declared."

4. The opinion of the Supreme Court of the State of Washington, dated November 28th, 1913, in the case of *Peet vs. Mills*, (Advance Sheets, Washington Decisions, page 315), has been called to our attention by the defendant in error, in support of the position taken by it in the case at bar. We are unable to agree with counsel that the Supreme Court of the State of Washington in that case reached a conclusion different from that reached by us in the present case. In the Washington case the plaintiff, Peet, while in the employ of the Seattle, Renton and Southern Railway Company, as a motorman, was injured in a collision between two of the railway company's trains. The defendant, Mills, was then the president of the railway company, and the plaintiff in his suit sought to hold him personally responsible for the injuries because of the allegations that when Mills assumed control and management of the railway company, it was equipped with a block signal system for use in foggy weather, which the defendant failed to operate; and that when complaint was made by the train operators of the great danger of operating the trains without the aid of the block signals, a promise was made by the defendant, Mills, to have the block signals working during foggy weather, which promise the defendant failed to keep, and as a consequence of his negligence in so failing, the plaintiff was injured. The trial court sustained a demurrer to the complaint, and the plaintiff electing to stand upon his complaint, the action was

dismissed and an appeal taken to the Supreme Court. The decision of the lower court was affirmed.

In whatever light the Supreme Court of the State of Washington may have viewed the case, no portion of the language used by it in that case can be claimed to cover the facts of the case which we now have under consideration. In the Washington case the injury was alleged to have been caused by the negligence of the defendant who was the president of the railway, that is, in the same employ with the plaintiff. In the case now at bar the death of the decedent is alleged to have been caused by the negligence of the Northern Pacific Railway Company, a party not in the same employ with the decedent, and in no manner connected with said employment. The Washington case, viewed from this standpoint, comes within the express words of the statute; the present case does not. Here we have an entirely different state of facts, calling for the application of entirely different principles of law; and, as we view it, the conclusions we have reached are in no sense conflicting or inconsistent with the opinion in the Washington case.

The decision of the lower court is reversed, with directions to overrule the demurrer.

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Supreme Court of the United States

OCTOBER TERM, 1915.

No. 133.

NORTHERN PACIFIC RAILWAY COMPANY,
Petitioner,

vs.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, A MINOR, CATHERINE MEESE, A MINOR, LIZZIE MEESE, A MINOR, WILLIE MEESE, A MINOR, BENNIE MEESE, A MINOR, BY THEIR GUARDIAN AD LITEM, MARY A. MEESE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR PETITIONER.

CHARLES W. BUNN.

Supreme Court of the United States

OCTOBER TERM, 1915.

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NORTHERN PACIFIC RAILWAY COMPANY,
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MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, A MINOR, CATHERINE MEESE, A MINOR, LIZZIE MEESE, A MINOR, WILLIE MEESE, A MINOR, BENNIE MEESE, A MINOR, BY THEIR GUARDIAN AD LITEM, MARY A. MEESE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

STATEMENT OF FACTS.

The interpretation of an act of the Legislature of Washington approved March 14, 1911, is the only matter involved in this case. The act referred to is Chapter 74 of the laws of that year. It consists of a complete revision of the legislation and common law of the state applicable to compensation of injured workmen, abolishing remedies in the courts to recover damages for accidents and establishing an insurance fund administered by the state and created by assessment against all hazardous industries. All employers in hazardous industries are required annually to pay

into the fund percentages of their payrolls specified in the act, varying as between different industries. The state treasurer is made custodian of the fund and the act contains a schedule of awards for death and for each kind of personal injury.

This action was brought in the District Court of the United States by the wife and children of Benjamin Meese, deceased, citizens of the state of Washington, against the Northern Pacific Railway Company, a corporation under the laws of Wisconsin, and the jurisdiction rested wholly on diverse citizenship.

The complaint alleged that Meese, being in the employ of the Seattle Brewing & Malting Company, on the premises of that company, while engaged in loading product of the brewery into cars furnished by the Railway Company, was killed by employes of the Railway Company negligently shunting other cars against those in and about which Meese was working.

The action is based on the statutes of Washington giving an action for death caused by negligence. The contention of plaintiffs is that the compensation act is confined in its scope to remedies against employers, has no application to an action against any person except employer; and that therefore, Meese not having been an employe of the Railway Company, the act does not stand in the way of this action.

The defendant on the other hand contends that the workmen's compensation act abolishes all actions in the courts by workmen in the hazardous employments referred to in the act, whether against employers or against third persons. This difference of interpretation of the state law is the only question involved.

The District Judge sustained a demurrer to the complaint, holding that the plaintiff's only remedy was

for the benefits created under the act and therein specified. *Meese v. Northern Pacific Ry. Co.*, 206 Fed. 222. The Circuit Court of Appeals, in an opinion filed February 16, 1914, reversed the judgment of the District Court, holding that properly interpreted the compensation act does not profess to abolish a workman's action for negligent injury against any person other than his employer. (211 Fed. 254.)

But we contend that the Supreme Court of the state of Washington, in the case of *Peet v. Mills*, 136 Pac. Rep. 685, in an opinion delivered November 28, 1913, construed the state law as repealing and forbidding this action; and that this decision ought to be controlling on the Federal Courts. This decision of the state Supreme Court was called to the attention of the Circuit Court of Appeals, whose view with respect thereto is more fully shown in its opinion.

ASSIGNMENT OF ERROR.

Error is assigned that the Circuit Court of Appeals should have followed *Peet v. Mills* and have affirmed the judgment of the District Court.

ARGUMENT.

At the outset it should be noted that the question here raised is the interpretation of the workmen's compensation act. No question of the validity of the act can be involved. Not only was no such question considered below but it is quite obvious that no such question could have been or can be considered. This action is based on the state statute of Washington creating a cause of action for death. This action state legislation gave and state legislation may take away. The whole question therefore is of interpretation.

It is also clear that deceased was injured in an employment and at a place falling within the terms of the act. Section 2 enumerates factories, mills and workshops where machinery is used, and breweries. The definitions in Sec. 3 make it plain that these terms are intended to include all premises and yards used with factories or mills. An item in "Schedule of Contributions" (Sec. 4) is: "Breweries, bottling works; boiler works; foundries; machine shops not otherwise specified .020."

It being thus shown that the case must rest (as it was rested in the decision below) on interpretation of the act we come to consideration of the terms thereof.

The act is printed in Laws of Washington, 1911, p. 345, and printed also in appendix to this brief. The title and Sec. 1, which are the important provisions indicating the scope of the law, are as follows:

"RELATING TO COMPENSATION OF INJURED WORKMEN.

An act relating to the compensation of injured workmen in our industries, and the compensation to their dependents where such injuries result in death, creating an industrial insurance department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the nonobservance of regulations for the prevention of such injuries and for violation of its provisions, asserting and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of jurisdiction

of such controversies, and repealing sections 6594, 6595, and 6596 of Remington and Ballinger's Annotated Codes and Statutes of Washington, relating to employes in factories, mills or workshops where machinery is used, actions for the recovery of damages and prescribing a punishment for the violation thereof.

Be it enacted by the Legislature of the State of Washington:

Section 1. *Declaration of Police Power.*

The common law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided."

Section 3 defines the term "workman" in this language:

"Workman means every person in this state, who, after September 30, 1911, is engaged in the employment of an employer carrying on or conducting any of the industries scheduled or classified in section 4, whether by way of manual labor or otherwise, and whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer: *Provided, however,* That if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children, or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case."

Section 5, prescribing the schedule of compensations, is introduced by the language following:

"Each workman who shall be injured whether upon the premises or at the plant or, he being in the course of his employment away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever."

The decision of the Supreme Court of Washington in *Peet v. Mills*, filed November 28, 1913, is printed in appendix to this brief and is reported, 136 Pac. Rep. 685. That was an action brought by a motorman in the employ of a railway company against the president of the company, in which it was sought to hold the president personally (although he was not plaintiff's employer) on the ground of his personal negligence. The opinion of the court opens with the statement that the contention there considered is "that the act is applicable only where recovery is sought upon the ground of the negligence of the employer."

It appears from the opinion that this contention was based on two grounds: (a) that the act, being in derogation of common law and not expressly abolishing negligence as ground of recovery, except as ground of recovery against employers, should by a strict construction be limited to employers; (b) that although the body of the act contains language sufficiently broad to include all defendants, whether employers or not, this language ought to be limited by the title, which it was alleged confines the act to employers.

The court said in respect of these contentions: that the act should be construed liberally as a remedial statute, instead of strictly; that the policy of the legislature as shown in the act is that every hazardous industry should bear the whole burden arising out of injuries to its employes; that the remedies of the act are ample, full and complete to reach every injury sustained by a workman, regardless of the cause of the injury and regardless of the negligence to which it may be attributed. The court said that the act is not limited to abolishment of negligence as a ground of action against an employer; that to say so overlooks and reads out of the act the controlling

principle that each industry itself should bear the whole burden of its injuries, making these injuries a charge against the cost of production as much as the cost of tools, machinery or material entering into production. The court said:

> "That in so doing the legislative mind was intent upon the abolishment of all causes of action that may have theretofore existed, irrespective of the persons in favor of whom or against whom such right might have existed."

Again the court said:

> "For these reasons we are of the opinion that the compensation provided by the act in case of injury to any workman in any hazardous occupation was intended to be exclusive of every other remedy, and that all causes of action theretofore existing, except as they are saved by the provisos of the act, are done away with."

Touching the argument that the title is restrictive of the broad language in the body of the act referred to by the court, the court said that the clause in the title "abolishing the doctrine of negligence as a ground of recovery of damages against employers" is only one matter of several covered by the title; that the title is plainly broad enough to indicate that the act is intended to furnish the *only compensation* to be allowed injured workmen: that the title fairly includes *any and all rights of action theretofore existing* in which such compensation might have been obtained.

Coming to examine the opinion of the Circuit Court of Appeals (printed in appendix to this brief) it will be found directly and fundamentally in conflict with the opinion of the Supreme Court of Washington in *Peet v. Mills.* The Circuit Court of Appeals relies largely on the contention that the title to the act

is limited to the abolition of actions against employers. This was the very contention considered and overruled by the state Supreme Court. The Circuit Court of Appeals holds that the title is narrower than the body of the act. This is directly contrary to the opinion of the state Supreme Court. The Circuit Court of Appeals holds that the act should be strictly construed because in derogation of common law and previous statutory law and this ruling is in the teeth of the decision of the state Supreme Court. The Circuit Court of Appeals explains the decision of the state court in *Peet v. Mills* by the fact that the defendant, Mills, president of the railway company, was in the employ of the same corporation which employed the plaintiff motorman. But the action against Mills was not based on the relation of employer and employe; and that plaintiff and defendant were in the employ of the same corporation had nothing to do with the case. Mills was sued for negligence exactly as the Railway Company in this case is sued; the most casual reading of the opinion of the state Supreme Court shows that its decision cannot thus be explained. That court stated the contention which it overruled to be, that the act was confined to *abolishing actions for negligence of an employer.* It treated the defendant, Mills, as a stranger and not as an employer and held that the act was not so confined. Had the court regarded Mills as an employer that would have ended all controversy.

The Circuit Court of Appeals has refused to give effect to plain language in the body of the act, holding in effect that some of the provisions thereof are ineffectual because not embraced in the title; but whether the act is in whole or in part invalid on account of a too narrow title is a question of state

law and not of federal law. What effect as a matter of interpretation the title should have on the body of the act is also a question of state law. No provision of the federal constitution requires state acts to have any title. In this respect also the court below is directly in conflict with the state Supreme Court.

The opinion of the Circuit Court of Appeals rests partly on the argument that the workmen's compensation act does not in terms repeal sections 183 and 194 of Remington and Ballinger's Annotated Codes of Washington. These two sections, so far as important, read as follows:

> "Section 183: * * * When the death of a person is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death."
>
> "Section 194: No action for a personal injury to any person occasioning his death shall abate, nor shall such right of action determine, by reason of such death, if he have a wife or child living; * * * but such action may be prosecuted or commenced and prosecuted in favor of such wife or in favor of the wife and children * * *."

But no doubt can be entertained that actions for death are abolished by the workmen's compensation act in all the cases where actions for other injuries are abolished. There is no difference. If the act abolishes the action Meese would have had against the Railway Company it abolishes the action by representatives for his death. The whole question comes back to that which was considered and passed on by the state Supreme Court, viz., whether the act abolishes all actions for negligence or is confined to actions against employers. So far as death is concerned, it

is plainly included like other injuries under the compensation act, the compensation for death being the first item in the schedule. See Sec. 5.

There are good reasons why Secs. 183 and 194 of the Code were not repealed by the compensation act. These sections creating liability for death by wrongful act remaining in force (a) as to all non-hazardous employment not covered by the compensation act, and (b) in the case of a workman in a hazardous employment injured "away from the plant of his employer" by negligence of a third person. The definition of "workman" in Sec. 3 contains a proviso, that in such cases the injured workman, or his representatives in case of death, shall elect whether to take under the act or to sue the wrong-doer. Touching this language the Circuit Court of Appeals argues curiously, saying that the cause of action "against such other referred to in this language must be based upon the prior statute and therefore that the prior statute is not repealed but continued in force." Obviously continued in force in the special case stated in the proviso, viz., the case of a workman injured by negligence of a third person while absent from the plant of his employer.

The District Judge in deciding this case took what seems to us plainly the correct view of this proviso, saying:

> "'At the plant' may include less or more than 'on the premises,' depending on the relative extent of the two; but these two expressions show an intention not to limit the application of the law to real property boundaries. The proviso, expressly preserving the right of action at law for the death of an employe, resulting from an injury 'occurring away from the plant of the employer,' clearly shows an intent to except from that provision of the act, abolishing all

> private controversies and all rights of civil action, what, but for such provision, would have been abolished, and, as the right of civil action is alone preserved when the injury occurs 'away from the plant of the employer,' then it is not preserved, but is abolished, when it occurs at the plant of the employer."

It is quite evident that this proviso is intended to state the only case in which a workman in hazardous employment retains the remedy for negligence which he had before the compensation act. The result of the view of the Circuit Court of Appeals is that a workman injured by negligence of a third person away from his employer's plant must elect and cannot both sue the third person and take benefits under the compensation law; while if he is injured within his employer's plant he may have both rights and pursue both remedies without election.

There can be no doubt that the act provides a benefit for the death of Meese and that his representatives or dependents are entitled to call on the fund in the hands of the state treasurer for the compensation prescribed in Sec. 5 (a) of the act. And if this right against the fund exists it follows necessarily that, with the single exception of election of remedies where the workman is injured away from the plant, the right to recover damages against the wrongdoer is by the act abolished. The act abolished actions in every case (with the single exception noted) where it gave benefits from the insurance fund.

Whatever might be said as an original question about the interpretation of the state law, we submit that the Supreme Court of the state has determined all questions of interpretation, which in any view can be involved in this case, and that the decision of the Circuit Court of Appeals is at every point in conflict

with the interpretation placed on the act by the state court. There being no federal question in the case and the whole question being of the interpretation of the state statute, it seems necessary only to suggest that this is a case where the courts of the United States cannot properly overrule the courts of the state.

CHARLES W. BUNN,
For Petitioner.

LAWS OF WASHINGTON—1911.

Chapter 74—(H. B. 14).

Relating to Compensation of Injured Workmen.

AN ACT relating to the compensation of injured workmen in our industries, and the compensation to their dependents where such injuries result in death, creating an industrial insurance department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the non-observance of regulations for the prevention of such injuries and for violation of its provisions, asserting and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of jurisdiction of such controversies, and repealing sections 6594, 6595, and 6596 of Remington and Ballinger's Annotated Codes and Statutes of Washington, relating to employes in factories, mills or workshops where machinery is used, actions for the recovery of damages and prescribing a punishment for the violation thereof.

Be it enacted by the Legislature of the State of Washington:

Section 1. *Declaration of Police Power.*

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pense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formally occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided.

Sec. 2. *Enumeration of Extra Hazardous Works.* There is a hazard in all employment, but certain employments have come to be and to be recognized as being inherently constantly dangerous. This act is intended to apply to all such inherently hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the state, in the following enumeration, and they are intended to be embraced within the term "extra hazardous" wherever used in this act, to-wit:

Factories, mills and workshops where machinery is used; printing, electrotyping, photo-engraving and stereotyping plants where machinery is used; foundries, blast furnaces, mines, wells, gas works, waterworks, reduction works, breweries, elevators, wharves, docks, dredges, smelters, powder works; laundries operated by power; quarries; engineering works; log-

ging, lumbering and ship building operations; logging, street and interurban railroads; buildings being constructed, repaired, moved or demolished; telegraph, telephone, electric light or power plants or lines, steam heating or power plants, steamboats, tugs, ferries and railroads. If there be or arise any extra hazardous occupation or work other than those hereinabove enumerated, it shall come under this act, and its rate of contribution to the accident fund hereinafter established, shall be, until fixed by legislation, determined by the department hereinafter created, upon the basis of the relation which the risk involved bears to the risks classified in section 4.

Sec. 3. *Definitions.*

In the sense of this act words employed mean as here stated, to-wit:

Factories mean undertakings in which the business of working at commodities is carried on with power-driven machinery, either in manufacture, repair or change, and shall include the premises, yard and plant of the concern.

Workshop means any plant, yard, premises, room or place wherein power-driven machinery is employed and manual labor is exercised by way of trade for gain or otherwise in or incidental to the process of making, altering, repairing, printing or ornamenting, finishing or adapting for sale or otherwise any article or part of article, machine or thing, over which premises, room or place the employer of the person working therein has the right of access or control.

Mill means any plant, premises, room or place where machinery is used, any process of machinery, changing, altering or repairing any article or commodity for sale or otherwise, together with the yards and

premises which are a part of the plant, including elevators, warehouses and bunkers.

Mine means any mine where coal, clay, ore, mineral, gypsum or rock is dug or mined underground.

Quarry means an open cut from which coal is mined, or clay, ore, mineral, gypsum, sand, gravel or rock is cut or taken for manufacturing, building or construction purposes.

Engineering work means any work of construction, improvement or alteration or repair of buildings, structures, streets, highways, sewers, street railways, railroads, logging roads, interurban railroads, harbors, docks, canals; electric, steam, or water power plants; telegraph and telephone plants and lines; electric light or power lines, and includes any other works for the construction, alteration or repair of which machinery driven by mechanical power is used.

Except when otherwise expressly stated, employer means any person, body of persons, corporate or otherwise, and the legal personal representatives of a deceased employer, all while engaged in this state in any extra hazardous work.

Workman means every person in this state, who, after September 30, 1911, is engaged in the employment of an employer carrying on or conducting any of the industries scheduled or classified in section 4, whether by way of manual labor or otherwise, and whether upon the premises or at the plant, or, he being in the course of his employment, away from the plant of his employer: *Provided, however,* That if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children, or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such

other, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the state may be prosecuted or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

Any individual employer or any member or officer of any corporate employer who shall be carried upon the pay roll at a salary or wage not less than the average salary or wage named in such pay roll and who shall be injured, shall be entitled to the benefit of this act as and under the same circumstances as and subject to the same obligations as a workman.

Dependent means any of the following named relatives of a workman whose death results from any injury and who leaves surviving no widow, widower, or child under the age of sixteen years, viz., invalid child over the age of sixteen years, daughter between sixteen and eighteen years of age, father, mother, grandfather, grand-mother, step-father, step-mother, grandson, grand-daughter, step-son, step-daughter, brother, sister, half-sister, half-brother, niece, nephew, who at the time of the accident, are dependent, in whole or in part, for their support upon the earnings of the workman. Except where otherwise provided by treaty, aliens, other than father or mother, not residing within

the United States at the time of the accident are not included.

Beneficiary means a husband, wife, child or dependent of a workman, in whom shall vest a right to receive payment under this act.

Invalid means one who is physically or mentally incapacitated from earning.

The word "child" as used in this act, includes a posthumous child, a child legally adopted prior to the injury, and an illegitimate child legitimated prior to the injury.

The words injury or injured, as used in this act, refer only to an injury resulting from some fortuitous event as distinguished from the contraction of disease.

Sec. 4. *Schedule of Contribution.*

Insomuch as industry should bear the greater portion of the burden of the cost of its accidents, each employer shall, prior to January 15th of each year, pay into the state treasury, in accordance with the following schedule, a sum equal to a percentage of his total pay roll for that year, to-wit: (the same being deemed the most accurate method of equitable distribution of burden in proportion to relative hazard):

CONSTRUCTION WORK.

Tunnels, bridges, trestles, sub-aqueous works, ditches and canals (other than irrigation without blasting), dock excavation, fire escapes, sewers, house moving, house wrecking	.065
Iron or steel frame structures or parts of structures	.080
Electric light or power plants or systems, telegraph or telephone systems, pile driving, steam railroads	.050

Steeples, towers or grain elevators, not metal framed, dry-docks without excavation, jetties, breakwaters, chimneys, marine railways, water works or systems, electric railways with rock work or blasting, blasting, erecting fireproof doors or shutters..... .050

Steam heating plants, tanks, water towers or windmills, not metal frames..... .040

Shaft sinking.....060

Concrete buildings, freight or passenger elevators, fire-proofing of buildings, galvanized iron or tin works, gas works, or systems, marble, stone or brick work, road making with blasting, roof work, safe moving, slate work, outside plumbing work, metal smoke-stacks or chimneys..... .050

Excavations not otherwise specified, blast furnaces ..... .040

Street or other grading, cable or electric street railways without blasting, advertising signs, ornamental metal work in buildings..... .035

Ship or boat building or wrecking with scaffolds, floating docks..... .045

Carpenter work not otherwise specified..... .035

Installation of steam boilers or engines, placing wire in conduits, installing dynamos, putting up belts for machinery, marble, stone or tile setting, inside work, mantle setting, metal ceiling work, mill or ship wrighting, painting of buildings or structures, installation of automatic sprinklers, ship or boat rigging, concrete laying in floors, foundations or street paving, asphalt laying, covering steam pipes or boilers, installation of machinery not otherwise specified ..... .030

Drilling wells, installing electrical apparatus or fire alarm systems in buildings, house heating or ventilating systems, glass setting, building hot houses, lathing, paper hanging, plastering, inside plumbing, wooden stair building, road making..... .020

OPERATION (INCLUDING REPAIR WORK) OF

(All combinations of material take the higher rate when not otherwise provided).

Logging railroads, railroads, dredges, interurban electric railroads using third rail system, dry or floating docks	.050
Electric light or power plants, interurban electric railroads not using third rail system, quarries	.040
Street railways, all employes, telegraph or telephone systems, stone crushing, blasting furnaces, smelters, coal mines, gas works, steamboats, tugs, ferries	.030
Mines, other than coal, steam heating or power plants	.025
Grain elevators, laundries, water works, paper or pulp mills, garbage works	.020

FACTORIES USING POWER-DRIVEN MACHINERY.

Stamping tin or metal	.045
Bridge work, railroad car or locomotive making or repairing, cooperage, logging with or without machinery, saw mills, shingle mills, staves, veneer, box, lath, packing cases, sash, door or blinds, barrel, keg, pail, basket, tub, wooden ware or wooden fibre ware, rolling mills, making steam shovels or dredges, tanks, water towers, asphalt, building material not otherwise specified, fertilizer, cement, stone with or without machinery, kindling wood, masts and spars with or without machinery, canneries, metal stamping extra, creosoting works, pile treating works	.025
Excelsior, iron, steel, copper, zinc, brass or lead articles or wares not otherwise specified, working in wood not otherwise specified, hardware, tile, brick, terra cotta, fire clay, pottery, earthenware, porcelain ware, peat fuel, brickettes	.020

Breweries, bottling works, boiler works, foundries, machine shops not otherwise specified	.020
Cordage, working in food stuffs, including oils, fruits and vegetables, working in wool, cloth, leather, paper, broom, brush, rubber or textiles not otherwise specified	.015
Making jewelry, soap, tallow, lard, grease, condensed milk	.015
Creameries, printing, electrotyping, photo-engraving, engraving, lithographing	.015

MISCELLANEOUS WORK.

Stevedoring, longshoring	.030
Operating stock yards, with or without railroad entry, packing houses	.025
Wharf operation, artificial ice, refrigerating or cold storage plants, tanneries, electric systems not otherwise specified	.020
Theater stage employes	.015
Fire works manufacturing	.050
Powder works	.100

The application of this act as between employers and workmen shall date from and include the first day of October, 1911. The payment for 1911 shall be made prior to the day last named, and shall be preliminarily collected upon the pay roll of the last preceding three months of operation. At the end of each year an adjustment of accounts shall be made upon the basis of the actual pay roll. Any shortage shall be made good on or before February 1st, following. Every employer who shall enter into business at any intermediate day shall make his payment for the initial year or portion thereof before commencing operation; its amount shall be calculated upon his estimated pay roll, an adjustment shall be made on or before February 1st of the following year in the manner above provided.

For the purpose of such payments accounts shall be kept with each industry in accordance with the classification herein provided and no class shall be liable for the depletion of the accident fund from accidents happening in any other class. Each class shall meet and be liable for the accidents occurring in such class. There shall be collected from each class as an initial payment into the accident fund as above specified on or before the 1st day of October, 1911, one-fourth of the premium of the next succeeding year, and one-twelfth thereof at the close of each month after December, 1911: *Provided*, Any class having sufficient funds credited to its account at the end of the first three months or any month thereafter, to meet the requirements of the accident fund, that class shall not be called upon for such month. In case of accidents occurring in such class after lapsed payment or payments said class shall pay the said lapsed or deferred payments commencing at the first lapsed payment, as may be necessary to meet such requirements of the accident fund.

The fund thereby created shall be termed the "accident fund" which shall be devoted exclusively to the purpose specified for it in this act.

In that the intent is that the fund created under this section shall ultimately become neither more or less than self-supporting, exclusive of the expense of administration, the rates in this section named are subject to future adjustment by the legislature, and the classifications to rearrangement following any relative increase or decrease of hazard shown by experience.

It shall be unlawful for the employer to deduct or obtain any part of the premium required by this section to be by him paid from the wages or earnings of his workmen or any of them, and the making or attempt to make any such deduction shall be a gross

misdemeanor. If, after this act shall have come into operation, it is shown by experience under the act, because of poor or careless management, any establishment or work is unduly dangerous in comparison with other like establishments or works, the department may advance its classification of risks and premium rates in proportion to the undue hazard. In accordance with the same principle, any such increase in classification or premium rate, shall be subject to restoration to the schedule rate. Any such change in classification of risks or premium rates, or any change caused by change in the class of work, occurring during the year shall, at the time of the annual adjustment, be adjusted by the department in proportion to its duration in accordance with the schedule of this section. If, at the end of any year it shall be seen that the contribution to the accident fund by any class of industry shall be less than the drain upon the fund on account of that class, the deficiency shall be made good to the fund on the 1st day of February of the following year by the employers of that class in proportion to their respective payments for the past year.

For the purposes of such payment and making good of deficit, the particular classes of industry shall be as follows:

CONSTRUCTION WORK.

Class 1. Tunnels, sewer, shaft sinking, drilling wells.

Class 2. Bridges, mill wrighting, trestles, steeples, towers or grain elevators not metal framed, tanks, water towers, wind-mills not metal framed.

Class 3. Sub-aqueous works, canal other than irrigation or docks with or without blasting, pile driving, jetties, breakwaters, marine railways.

Class 4. House moving, house wrecking, safe moving.

Class 5. Iron or steel frame structures or parts of structures, fire escapes, erecting fire-proof doors or shutters, blast furnaces, concrete chimneys, freight or passenger elevators, fire proofing of buildings, galvanized iron or tin work, marble, stone or brick work, roof work, slate work, plumbing work, metal smoke stack or chimneys, advertising signs, ornamental metal work in buildings, carpenter work not otherwise specified, marble, stone or tile setting, mantle setting, metal ceiling work, painting of buildings or structures, concrete laying in floors or foundations, glass setting, building hot houses, lathing, paper hanging, plastering, wooden stair building.

Class 6. Electric light and power plants or system, telegraph or telephone systems, cable or electric railways with or without rock work or blasting, water works or systems, steam heating plants, gas works or systems, installation of steam boilers or engines, placing wires in conduits, installing dynamos, putting up belts for machinery, installation of automatic sprinklers, covering steam pipes or boilers, installation of machinery not otherwise specified, installing electric apparatus or fire alarm systems in buildings, house heating or ventilating systems.

Class 7. Steam railroads, logging railroads.

Class 8. Road making, street or other grading, concrete laying in street paving, asphalt laying.

Class 9. Ship or boat building with scaffolds, ship wrighting, ship or boat rigging, floating docks.

OPERATION (INCLUDING REPAIR WORK) OF

Class 10. Logging, saw mills, shingle mills, lath mills, masts and spars with or without machinery.

Class 12. Dredges, dry or floating docks.

Class 13. Electric light or power plants or systems,

steam heat or power plants or systems, electric systems not otherwise specified.

Class 14. Street railways.

Class 15. Telegraph systems, telephone systems.

Class 16. Coal mines.

Class 17. Quarries, stone crushing, mines other than coal.

Class 18. Blast furnaces, smelters, rolling mills.

Class 19. Gas works.

Class 20. Steamboats, tugs, ferries.

Class 21. Grain elevators.

Class 22. Laundries.

Class 23. Water works.

Class 24. Paper or pulp mills.

Class 25. Garbage works, fertilizer.

FACTORIES (USING POWER-DRIVEN MACHINERY).

Class 26. Stamping tin or metal.

Class 27. Bridge work, making steam shovels or dredges, tanks, water towers.

Class 28. Railroad car or locomotive making or repairing.

Class 29. Cooperage, staves, veneer, box, packing cases, sash (,) door or blinds, barrel, keg, pail, basket, tub, wood ware or wood fibre ware, kindling wood, excelsior, working in wood not otherwise specified.

Class 30. Asphalt.

Class 31. Cement, stone with or without machinery, building materials not otherwise specified.

Class 32. Canneries of fruits or vegetables.

Class 33. Canneries of fish or meat products.

Class 34. Iron, steel, copper, zinc, brass or lead articles or wares, hardware, boiler works, foundries, machine shops not otherwise specified.

Class 35. Tile, brick, terra cotta, fire clay, pottery, earthenware, porcelain ware.

Class 36. Peat fuel, brickettes.

Class 37. Breweries, bottling works.

Class 38. Cordage, working in wool, cloth, leather, paper, brush, rubber or textile not otherwise specified.

Class 39. Working in food stuffs, including oils, fruits, vegetables.

Class 40. Condensed milk, creameries.

Class 41. Printing, electrotyping, photo-engraving, engraving, lithographing, making jewelry.

Class 42. Stevedoring, longshoring, wharf operation.

Class 43. Stock yards, packing houses, making soap, tallow, lard, grease, tanneries.

Class 44. Artificial ice, refrigerating or cold storage plants.

Class 45. Theater stage employes.

Class 46. Fire works manufacturing, powder works.

Class 47. Creosoting works, pile treating works.

If a shingle establishment or work comprises several occupations listed in this section in different risk classes, the premium shall be computed according to the pay roll of each occupation if clearly separable, otherwise an average rate of premium shall be charged for the entire establishment, taking into consideration the number of employes and the relative hazards. If an employer besides employing workmen in extra hazardous employment shall also employ workmen in employments not extra hazardous the provisions of this act shall apply only to the extra hazardous departments and employments and the workmen employed therein. In computing the pay roll the entire compensation received by every workman employed in

extra hazardous employment shall be included, whether it be in the form of salary, wage, piece work, overtime, or any allowance in the way of profit-sharing, premium or otherwise, and whether payable in money, board, or otherwise.

Sec. 5. *Schedule of Awards.*

Each workman who shall be injured whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.

COMPENSATION SCHEDULE.

(a) Where death results from the injury the expenses of burial shall be paid in all cases, not to exceed $75.00 in any case, and,

(1) If the workman leaves a widow or invalid widower, a monthly payment of $20.00 shall be made throughout the life of the surviving spouse, to cease at the end of the month in which remarriage shall occur; and the surviving spouse shall also receive $5.00 per month for each child of the deceased under the age of sixteen years at time of the occurrence of the injury until such minor child shall reach the age of sixteen years, but the total monthly payment under this paragraph (1) of subdivision (a) shall not exceed $35.00. Upon remarriage of a widow she shall receive, once and for all, a lump sum equal to twelve times her monthly allowance, viz., the sum of $240.00.

but the monthly payment for the child or children shall continue as before.

(2) If the workman leaves no wife or husband, but a child or children under the age of sixteen years, a monthly payment of $10.00 shall be made to each such child until such child shall reach the age of sixteen years, but the total monthly payment shall not exceed $35.00, and any deficit shall be deducted proportionately among the beneficiaries.

(3) If the workman leaves no widow, widower, or child under the age of sixteen years, but leaves a dependent or dependents, a monthly payment shall be made to each dependent equal to fifty per cent of the average monthly support actually received by such dependent from the workman during the twelve months next preceding the occurrence of the injury, but the total payment to all dependents in any case shall not exceed $20.00 per month. If any dependent is under the age of sixteen years at the time of the occurrence of the injury, the payment to such dependent shall cease when such dependent shall reach the age of sixteen years. The payment to any dependent shall cease if and when, under the same circumstances, the necessity creating the dependency would have ceased if the injury had not happened.

If the workman is under the age of twenty-one years and unmarried at the time of his death, the parents or parent of the workman shall receive $20.00 per month for each month after his death until the time at which he would have arrived at the age of twenty-one years.

(4) In the event a surviving spouse receiving monthly payments shall die, leaving a child or children under the age of sixteen years, the sum he or she shall be receiving on account of such child or children shall be thereafter, until such child shall arrive at the

age of sixteen years, paid to the child increased 100 per cent, but the total to all children shall not exceed the sum of thirty-five dollars per month.

(b) Permanent total disability means the loss of both legs or both arms, or one leg and one arm, total loss of eyesight, paralysis or other condition permanently incapacitating the workman from performing any work at any gainful occupation.

When permanent total disability results from the injury the workman shall receive monthly during the period of such disability:

(1) If unmarried at the time of the injury, the sum of $20.00.

(2) If the workman have a wife or invalid husband, but no child under the age of sixteen years, the sum of $25.00. If the husband is not an invalid, the monthly payment of $25.00 shall be reduced to $15.00.

(3) If the workman have a wife or husband and a child or children under the age of sixteen years, or, being a widow or widower, have any such child or children, the monthly payment provided in the preceding paragraph shall be increased by five dollars for each such child until such child shall arrive at the age of sixteen years, but the total monthly payment shall not exceed thirty-five dollars.

(c) If the injured workman die during the period of total disability, whatever the cause of death, leaving a widow, invalid widower, or child under the age of sixteen years, the surviving widow or invalid widower shall receive twenty dollars per month until death or remarriage, to be increased five dollars per month for each child under the age of sixteen years until such child shall arrive at the age of sixteen years; but if such child is or shall be without father or mother, such child shall receive ten dollars per month until arriving at the age of sixteen years. The

total combined monthly payment under this paragraph shall in no case exceed thirty-five dollars. Upon remarriage the payments on account of a child or children shall continue as before to the child or children.

(d) When the total disability is only temporary, the schedule of payment contained in paragraphs (1), (2) and (3) of the foregoing subdivision (d) shall apply so long as the total disability shall continue, increased 50 per cent for the first six months of such continuance, but in no case shall the increase operate to make the monthly payment exceed sixty per cent of the monthly wage (the daily wage multiplied by twenty-six) the workman was receiving at the time of his injury. As soon as recovery is so complete that the present earning power of the workman, at any kind of work, is restored to that existing at the time of the occurrence of the injury the payments shall cease. If and so long as the present earning power is only partially restored the payments shall continue in the proportion which the new earning power shall bear to the old. No compensation shall be payable out of the accident fund unless the loss of earning power shall exceed five per cent.

(e) For every case of injury resulting in death or permanent total disability it shall be the duty of the department to forthwith notify the state treasurer, and he shall set apart out of the accident fund a sum of money for the case, to be known as the estimated lump value of the monthly payments provided for it, to be calculated upon the theory that a monthly payment of twenty dollars, to a person thirty years of age, is equal to a lump sum payment, according to the expectancy of life as fixed by the American Mortality Table, of four thousand dollars, but the total in no case to exceed the sum of four thousand dollars. The state treasurer shall invest said sum at interest in the

class of securities provided by law for the investment of the permanent school fund, and out of the same and its earnings shall be paid the monthly installments and any lump sum payment then or thereafter arranged for the case. Any deficiency shall be made good out of, and any balance or overplus shall revert to the accident fund. The state treasurer shall keep accurate account of all such segregations of the accident fund, and may borrow from the main fund to meet monthly payments pending conversion into cash of any security, and in such case shall repay such temporary loan out of the cash realized from the security.

(f) Permanent partial disability means the loss of either one foot, one leg, one hand, one arm, one eye, one or more fingers, one or more toes, any dislocation where ligaments are severed, or any other injury known in surgery to be permanent partial disability. For any permanent partial disability resulting from an injury, the workman shall receive compensation in a lump sum in an amount equal to the extent of the injury, to be decided in the first instance by the department, but not in any case to exceed the sum of $1,500.00. The loss of one major arm at or above the elbow shall be deemed the maximum permanent partial disability. Compensation for any other permanent partial disability shall be in the proportion which the extent of such disability shall bear to the said maximum. If the injured workman be under the age of twenty-one years and unmarried, the parents or parent shall also receive a lump sum payment equal to ten per cent of the amount awarded the minor workman.

(g) Should a further accident occur to a workman already receiving a monthly payment under this section for a temporary disability, or who has been previously the recipient of a lump sum payment under

this act, his future compensation shall be adjusted according to the other provisions of this section and with regard to the combined effect of his injuries, and his past receipt of money under this act.

(h) If aggravation, diminution, or termination of disability takes place or be discovered after the rate of compensation shall have been established or compensation terminated in any case the department may, upon the application of the beneficiary or upon its own motion, readjust for future application the rate of compensation in accordance with the rules in this section provided for the same, or in a proper case terminate the payments.

(i) A husband or wife of an injured workman, living in a state of abandonment for more than one year at the time of the injury or subsequently, shall not be a beneficiary under this act.

(j) If a beneficiary shall reside or remove out of the state the department may, in its discretion, convert any monthly payments provided for such case into a lump sum payment (not in any case to exceed $4,000.00) upon the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of $20.00 to a person thirty years of age is worth $4,000.00, or with the consent of the beneficiary, for a smaller sum.

(k) Any court review under this section shall be initiated in the county where the workman resides or resided at the time of the injury, or in which the injury occurred.

Sec. 6. *Intentional Injuries—Status of Minors.* If injury or death results to a workman from the deliberate intention of the workman himself to produce such injury or death, neither the workman nor the widow, widower, child or dependent of the workman

shall receive any payment whatsoever out of the accident fund. If injury or death results to a workman from the deliberate intention of his employer to produce such injury or death, the workman, the widow, widower, child or dependent of the workman shall have the privilege to take under this act and also have cause of action against the employer, as if this act had not been enacted, for any excess of damage over the amount received or receivable under this act.

A minor working at an age legally permitted under the laws of this state shall be deemed sui juris for the purpose of this act, and no other person shall have any cause of action or right to compensation for an injury to such minor workman except as expressly provided in this act, but in the event of a lump sum payment becoming due under this act to such minor workman, the management of the sum shall be within the probate jurisdiction of the courts the same as other property of minors.

Sec. 7. *Conversion into Lump Sum Payment.*

In case of death or permanent total disability the monthly payment provided may be converted, in whole or in part, into a lump sum payment (not in any case to exceed $4,000.00) on the theory, according to the expectancy of life as fixed by the American Mortality Table, that a monthly payment of $20.00 to a person thirty years of age is worth the sum of $4,000.00, in which event the monthly payment shall cease in whole or in part accordingly or proportionately. Such conversion may only be made after the happening of the injury and upon the written application of the beneficiary (in case of minor children, the application may be by either parent) to the department, and shall rest in the discretion of the department. Within the rule aforesaid the amount and value of the lump sum pay-

ment may be agreed upon between the department and the beneficiary.

Sec. 8. *Defaulting Employers.*

If any employer shall default in any payment to the accident fund hereinbefore in this act required, the sum due shall be collected by action at law in the name of the state as plaintiff, and such right of action shall be in addition to any other right of action or remedy. In respect to any injury happening to any of his workmen during the period of any default in the payment of any premium under section 4, the defaulting employer shall not, if such default be after demand for payment, be entitled to the benefits of this act, but shall be liable to suit by the injured workman (or the husband, wife, child or dependent of such workman in case death result from the accident), as he would have been prior to the passage of this act.

In case the recovery actually collected in such suit shall equal or exceed the compensation to which the plaintiff therein would be entitled under this act, the plaintiff shall not be paid anything out of the accident fund; if the said amount shall be less than such compensation under this act, the accident fund shall contribute the amount of the deficiency. The person so entitled under the provisions of this section to sue shall have the choice (to be exercised before suit) of proceeding by suit or taking under this act. If such person shall take under this act, the cause of action against the employer shall be assigned to the state for the benefit of the accident fund. In any suit brought upon such cause of action the defense of fellow-servant and assumption of risk shall be inadmissible, and the doctrine of comparative negligence shall obtain. Any such cause of action assigned to the state may be prosecuted or compromised by the depart-

ment in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department.

Sec. 9. *Employer's Responsibility for Safeguard.* If any workman shall be injured because of the absence of any safeguard or protection required to be provided or maintained by, or pursuant to, any statute or ordinance, or any departmental regulation under any statute, or be, at the time of the injury, of less than the maximum age prescribed by law for the employment of a minor in the occupation in which he shall be engaged when injured, the employer shall, within ten days after demand therefor by the department, pay into the accident fund, in addition to the same required by section 4 to be paid:

(a) In case the consequent payment to the workman out of the accident fund be a lump sum, a sum equal to fifty per cent of that amount.

(b) In case the consequent payment to the workman be payable in monthly payments, a sum equal to fifty per cent of the lump value of such monthly payment, estimated in accordance with the rule stated in section 7.

The foregoing provisions of this act shall not apply to the employer if the absence of such guard or protection be due to the removal thereof by the injured workman himself or with his knowledge by any of his fellow-workmen, unless such removal be by order or direction of the employer or superintendent or foreman of the employer, or anyone placed by the employer in control or direction of such workman. If the removal of such guard or protection be by the workman himself or with his consent by any of his

fellow-workmen, unless done by order or direction of the employer or the superintendent or foreman of the employer, or any one placed by the employer in control, or direction of such workman, the schedule of compensation provided in section 5 shall be reduced ten per cent for the individual case of such workman.

Sec. 10. *Exemption of Awards.*

No money paid or payable under this act out of the accident fund shall, prior to issuance and delivery of the warrant therefor, be capable of being assigned, charged, nor ever be taken in execution or attached or garnished, nor shall the same pass to any other person by operation of law. Any such assignment or charge shall be void.

Sec. 11. *Nonwaiver of Act by Contract.*

No employer or workman shall exempt himself from the burden or waive the benefits of this act by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be pro tanto void.

Sec. 12. *Filing Claim for Compensation.*

(a) Where a workman is entitled to compensation under this act he shall file with the department, his application for such, together with the certificate of the physician who attended him, and it shall be the duty of the physician to inform the injured workman of his rights under this act and to lend all necessary assistance in making this application for compensation and such proof of other matters as required by the rules of the department without charge to the workman.

(b) Where death results from injury the parties entitled to compensation under this act, or some one

in their behalf, shall make application for the same to the department, which application must be accompanied with proof of death and proof of relationship showing the parties to be entitled to compensation under this act, certificates of attending physician, if any, and such other proof as required by the rules of the department.

(c) If change of circumstance warrant an increase or rearrangement of compensation, like application shall be made therefor. No increase or rearrangement shall be operative for any period prior to application therefor.

(d) No application shall be valid or claim thereunder enforcable unless filed within one year after the day upon which the injury occurred or the right thereto accrued.

Sec. 13. *Medical Examination.*

Any workman entitled to receive compensation under this act is required, if requested by the department, to submit himself for medical examination at a time and from time to time at a place reasonably convenient for the workman and as may be provided by the rules of the department. If the workman refuses to submit to any such examination, or obstructs the same, his rights to monthly payments shall be suspended until such examination has taken place, and no compensation shall be payable during or for account of such period.

Sec. 14. *Notice of Accident.*

Whenever any accident occurs to any workman it shall be the duty of the employer to at once report such accident and the injury resulting therefrom to the department, and also to any local representative of the department. Such report shall state:

1. The time, cause and nature of the accident and

injuries, and the probable duration of the injury resulting therefrom.

2. Whether the accident arose out of or in the course of the injured person's employment.

3. Any other matters the rules and regulations of the department may prescribe.

Sec. 15. *Inspection of Employer's Books.*

The books, records and pay-rolls of the employer pertinent to the administration of this act shall always be open to inspection by the department or its traveling auditor, agent or assistant, for the purpose of ascertaining the correctness of the pay-roll, the men employed, and such other information as may be necessary for the department and its management under this act. Refusal on the part of the employer to submit said books, records and pay-rolls for such inspection to any member of the commission, or any assistant presenting written authority from the commission, shall subject the offending employer to a penalty of one hundred dollars for each offense, to be collected by civil action in the name of the state and paid into the accident fund, and the individual who shall personally give such refusal shall be guilty of a misdemeanor.

Sec. 16. *Penalty for Misrepresentation as to Pay-roll.*

Any employer who shall misrepresent to the department the amount of pay-roll upon which the premium under this act is based shall be liable to the state in ten times the amount of the difference in premium paid and the amount the employer should have paid. The liability to the state under this section shall be enforced in a civil action in the name of the state. All sums collected under this section shall be paid into the accident fund.

Sec. 17. *Public and Contract Work.*

Whenever the state, county or any municipal corporation shall engage in any extra hazardous work in which workmen are employed for wages, this act shall be applicable thereto. The employer's payments into the accident fund shall be made from the treasury of the state, county or municipality. If said work is being done by contract, the pay-roll of the contractor and the subcontractor shall be the basis of computation, and in the case of contract work consuming less than one year in performance the required payment into the accident fund shall be based upon the total pay-roll. The contractor and any subcontractor shall be subject to the provisions of the act, and the state for its general fund, the county or municipal corporation shall be entitled to collect from the contractor the full amount payable to the accident fund, and the contractor, in turn shall be entitled to collect from the subcontractor his proportionate amount of the payment. The provisions of this section shall apply to all extrahazardous work done by contract, except that in private work the contractor shall be responsible, primarily and directly, to the accident fund for the proper percentage of the total pay-roll of the work and the owner of the property affected by the contract shall be surety for such payments. Whenever and so long as, by state law, city charter or municipal ordinance, provision is made for municipal employes injured in the course of employment, such employes shall not be entitled to the benefits of this act and shall not be included in the payroll of the municipality under this act.

Sec. 18. *Interstate Commerce.*

The provisions of this act shall apply to employers and workmen engaged in intrastate and also in interstate or foreign commerce, for whom a rule of liability

or method of compensation has been or may be established by the Congress of the United States, only to the extent that their mutual connection with intrastate work may and shall be clearly separable and distinguishable from interstate or foreign commerce, except that any such employer and any of his workmen working only in this state may, with the approval of the department, and so far as not forbidden by any act of Congress, voluntarily accept the provisions of this act by filing written acceptances with the department. Such acceptances, when filed with and approved by the department, shall subject the acceptors irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Payment of premium shall be on the basis of the payroll of the workmen who accept as aforesaid.

Sec. 19. *Elective Adoption of Act.*

Any employer and his employes engaged in works not extrahazardous may, by their joint election, filed with the department, accept the provisions of this act, and such acceptances, when approved by the department, shall subject them irrevocably to the provisions of this act to all intents and purposes as if they had been originally included in its terms. Ninety per cent of the minimum rate specified in section 4 shall be applicable to such case until otherwise provided by law.

Sec. 20. *Court Review.*

Any employer, workman, beneficiary, or person feeling aggrieved at any decision of the department affecting his interests under this act may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county of his residence (except as otherwise provided in subdivision (1) of section numbered 5) in so far

as such decision rests upon questions of fact, or of the proper application of the provisions of this act, it being the intent that matters resting in the discretion of the department shall not be subject to review. The proceedings in every such appeal shall be informal and summary, but full opportunity to be heard shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal shall have been served by mail or personally upon some member of the commission within twenty days following the rendition of the decision appealed from and communication thereof to the person affected thereby. No bond shall be required, except that an appeal by the employer from a decision of the department under section 9 shall be ineffectual unless, within five days following the service of notice thereof, a bond, with surety satisfactory to the court, shall be filed, conditioned to perform the judgment of the court. Except in the case last named an appeal shall not be a stay. The calling of a jury shall rest in the discretion of the court except that in cases arising under sections 9, 15 and 16 either party shall be entitled to a jury trial upon demand. It shall be unlawful for any attorney engaged in any such appeal to charge or receive any fee therein in excess of a reasonable fee, to be fixed by the court in the case, and, if the decision of the department shall be reversed or modified, such fee and the fees of medical and other witnesses and the costs shall be payable out of the administration fund, if the accident fund is affected by the litigation. In other respects the practice in civil cases shall apply. Appeal shall lie from the judgment of the superior court as in other civil cases. The attorney general shall be the legal adviser of the department and shall represent it in all proceedings, whenever so requested by any of the commissioners. In all court proceedings under or pursuant to this act

the decision of the department shall be prima facie correct, and the burden of proof shall be upon the party attacking the same.

Section 21. *Creation of Department.*

The administration of this act is imposed upon a department, to be known as the Industrial Insurance Department, to consist of three commissioners to be appointed by the governor. One of them shall hold office for the first two years, another for the first four years, and another for the first six years following the passage and approval of this act. Thereafter the term shall be six years. Each commissioner shall hold until his successor shall be appointed and shall have qualified. A decision of any question arising under this act concurred in by two of the commissioners shall be the decision of the department. The governor may at any time remove any commissioner from office in his discretion, but within ten days following any such removal the governor shall file in the office of the secretary of state a statement of his reasons therefor. The commission shall select one of their members as chairman. The main office of the commission shall be at the state capitol, but branch offices may be established at other places in the state. Each member of the commission shall have power to issue subpoenas requiring the attendance of witnesses and the production of books and documents.

Sec. 22. *Salary of Commissioners.*

The salary of each of the commissioners shall be thirty-six hundred dollars per annum, and he shall be allowed his actual and necessary traveling and incidental expenses; and any assistant to the commissioners shall be paid for each full day's service rendered by him, his actual and necessary traveling expenses and

such compensation as the commission may deem proper, not to exceed six dollars per day to an auditor, or five dollars per day to any other assistant.

Sec. 23. *Deputies and Assistants.*

The commissioners may appoint a sufficient number of auditors and assistants to aid them in the administration of this act, at an expense not to exceed $5,000.00 per month. They may employ one or more physicians in each county for the purpose of official medical examinations, whose compensation shall be limited to five dollars for each examination and report therein. They may procure such record books as they may deem necessary for the record of the financial transactions and statistical data of the department, and the necessary documents, forms and blanks. They may establish and require all employers to install and maintain a uniform form of payroll.

Sec. 24. *Conduct, Management and Supervision of Department.*

The commission shall, in accordance with the provisions of this act:

(1) Establish and promulgate rules governing the administration of this act.

(2) Ascertain and establish the amounts to be paid into and out of the accident fund.

(3) Regulate the proof of accident and extent thereof, the proof of death and the proof of relationship and the extent of dependency.

(4) Supervise the medical, surgical and hospital treatment to the intent that same may be in all cases suitable and wholesome.

(5) Issue proper receipts for moneys received, and certificates for benefits accrued and accruing.

(6) Investigate the cause of all serious injuries and

report to the governor from time to time any violations or laxity in performance of protective statutes or regulations coming under the observation of the department.

(7) Compile and preserve statistics showing the number of accidents occurring in the establishment or works of each employer, the liabilities and expenditures of the accident fund on account of, and the premium collected from the same, and hospital charges and expenses.

(8) Make annual reports to the governor (one of them not more than sixty nor less than thirty days prior to each regular session of the legislature) of the workings of the department, and showing the financial status and the outstanding obligations of the accident fund, and the statistics aforesaid.

Sec. 25. *Medical Witnesses.*

Upon the appeal of any workman from any decision of the department affecting the extent of his injuries or the progress of the same, the court may appoint not to exceed three physicians to examine the physical condition of the appellant, who shall make to the court their report thereon, and they may be interrogated before the court by or on behalf of the appellant in relation to the same. The fee of each shall be fixed by the court, but shall not exceed ten dollars per day each.

Sec. 26. *Disbursement of Funds.*

Disbursement out of the funds shall be made only upon warrants drawn by the state auditor upon vouchers therefor transmitted to him by the department and audited by him. The state treasurer shall pay every warrant out of the fund upon which it is drawn. If, at any time, there shall not be sufficient money in the fund on which any such warrant shall have been

drawn wherewith to pay the same, the employer on account of whose workman it was that the warrant was drawn shall pay the same, and he shall be credited upon his next following contribution to such fund the amount so paid with interest thereon at the legal rate from the date of such payment to the date such next following contribution became payable, and if the amount of the credit shall exceed the amount of the contribution, he shall have a warrant upon the same fund for the excess, and if any such warrant shall not be so paid, it shall remain, nevertheless, payable out of the fund. The state treasurer shall to such extent as shall appear to him to be advisable keep the moneys of the unsegregated portion of the accident fund invested at interest in the class of securities provided by law for the investment of the permanent school fund. The state treasurer shall be liable on his official bond for the safe custody of the moneys and securities of the accident fund, but all the provisions of an act approved February 21, 1907, entitled "An act to provide for state depositories and to regulate the deposits of state moneys therein," shall be applied to said moneys and the handling thereof by the state treasurer.

Sec. 27. *Test of Invalidity of Act.*

If any employer shall be adjudicated to be outside the lawful scope of this act, the act shall not apply to him or his workman, or if any workman shall be adjudicated to be outside the lawful scope of this act because of remoteness of his work from the hazard of his employer's work, any such adjudication shall not impair the validity of this act in other respects, and in every such case an accounting in accordance with the justice of the case shall be had of moneys received. If the provisions of section 4 of this act for the creation of the accident fund, or the provisions of this act

making the compensation to the workman provided in it exclusive of any other remedy on the part of the workman shall be held invalid the entire act shall be thereby invalidated except the provisions of section 31, and an accounting according to the justice of the case shall be had of moneys received. In other respects an adjudication of invalidity of any part of this act shall not affect the validity of the act as a whole or any other part thereof.

Sec. 28. *Statute of Limitations Saved.*

If the provisions of this act relative to compensation for injuries to or death of workmen become invalid because of any adjudication, or be repealed, the period intervening between the occurrence of an injury or death, not previously compensated for under this act by lump payment or completed monthly payments, and such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death: *Provided*, That such action be commenced within one year after such repeal or adjudication; but in any such action any sum paid out of the accident fund to the workman on account of injury, to whom the action is prosecuted, shall be taken into account or disposed of as follows: If the defendant employer shall have paid without delinquency into the accident fund the payment provided by section 4, such sums shall be credited upon the recovery as payment thereon, otherwise the sum shall not be so credited but shall be deducted from the sum collected and be paid into the said fund from which they had been previously disbursed.

Section 29. *Appropriations.*

There is hereby appropriated out of the state treasury the sum of one hundred and fifty thousand dollars,

or so much thereof as may be necessary, to be known as the administration fund, out of which the salaries, traveling and office expenses of the department shall be paid, and also all other expenses of the administration of the accident fund; and there is hereby appropriated out of the accident fund for the purpose to which said fund is applicable the sum of $1,500,000.00, or so much thereof as shall be necessary for the purposes of this act.

Sec. 30. *Safeguard Regulations Preserved.* Nothing in this act contained shall repeal any existing law providing for the installation or maintenance of any device, means or method for the prevention of accidents in extrahazardous work or for a penalty or punishment for failure to install or maintain any such protective device, means or method, but sections 8, 9, and 10 of the act approved March 6, 1905, entitled: "An act providing for the protection and health of employes in factories, mills or workshops, where machinery is used, and providing for suits to recover damages sustained by the violation thereof, and prescribing a punishment for the violation thereof and repealing an act entitled, 'An act providing for the protection of employes in factories, mills, or workshops where machinery is used, and providing for the punishment of the violation thereof, approved March 6, 1903,' and repealing all other acts or parts of acts in conflict herewith," are hereby repealed, except as to any cause of action which shall have accrued thereunder prior to October 1, 1911.

Sec. 31. *Distribution of Funds in Case of Repeal.* If this act shall be hereafter repealed, all moneys which are in the accident fund at the time of the repeal shall be subject to such disposition as may be

provided by the legislature and in default of such legislative provision distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

Sec. 32. *Saving Clause.*

This act shall not affect any action pending or cause of action existing on the 30th day of September, 1911.

Passed by the House February 23, 1911.

Passed by the Senate March 7, 1911.

Approved by the Governor March 14, 1911.

SUPREME COURT OF WASHINGTON.

Nov. 28, 1913.

Peet v. Mills.

Opinion.

MORRIS, J. By this appeal we are again called upon to review the Workmen's Compensation Act of 1911 (Laws 1911, c. 74), under appellant's contention that the act is applicable only where recovery is sought upon the ground of negligence of the employer. The facts upon which appellant predicates his right of action are these: On January 22, 1912, while in the employ of the Seattle, Renton & Southern Railway Company as motorman he was injured in a collision between two of the railway company's trains. Respondent was then the president of the railway company, and it is sought to hold him personally responsible for the injuries because of the allegations that, when he assumed the control and management of the railway company, it was equipped with a block signal system for use in foggy weather, which respondent negligently failed to operate; and that, when complaint was made by the train operators of the great danger of operating the trains without the aid of the block signals, a promise was made by respondent to have the block signals working during foggy weather, which promise respondent failed to keep, and as a consequence of his negligence in so failing appellant was injured. The court below sustained a demurrer to the complaint, and, appellant electing to stand upon his complaint, the action was dismissed, and this appeal taken.

(1) It is the contention of the appellant, conceding he was at the time of his injury a "workman" within the meaning of the act, and that as such he has no right of action against the railway company, his employer, that the act in no way infringes upon his right

of action against respondent because: (1) The act itself is in derogation of the common law, and, since it does not expressly abolish the doctrine of negligence as a ground of recovery except as against employers, it should be strictly construed; (2) even though it be admitted that the body of the act is in itself sufficient to abolish negligence as a ground of recovery of damages against all persons within the scope of the act, the title to the act is not broad enough to include such abolition as against anyone except employers. Our recent discussion of the Workmen's Compensation Act of 1911, as found in *State ex rel. Davis-Smith Co. v. Clausen*, 65 Wash. 156, 117 Pac. 1101, 37 L. R. A. (N. S.) 466, and *State v. Mountain Timber Co.*, 135 Pac. 645, renders unnecessary any further review of the act except in so far as may be necessary to notice the contentions here raised. The act contains its own declaration of legislative policy, in reciting in section 1 that the common law system in dealing with actions by employes against employers for injuries received in hazardous employments is inconsistent with the modern industrial conditions, uneconomic, unwise, and unfair, and that as the welfare of the state depends upon its industries, and even more upon the welfare of its workingmen, the state of Washington in the exercise of its police and sovereign power declares its policy to withdraw all phases of the premises from private controversy, regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation except as provided in the act, "and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished except as in this act provided."

(2, 3) It is a well-accepted rule that remedial statutes, seeking the correction of recognized errors and

abuses in introducing some new regulation for the advancement of the public welfare, should be construed with regard to the former law and the defects or evils sought to be cured and the remedy provided; that in so construing such statutes they should be interpreted liberally, to the end that the purpose of the Legislature in suppressing the mischief and advancing the remedy to be promoted, even to the inclusion of cases with the reason, although outside the letter, of the statute (36 Cyc. 1173); and that in construing the statute courts will look to the old law, the mischief sought to be abolished, and the remedy proposed. *State v. Stewart*, 52 Wash. 61, 100 Pac. 153, 17 Ann. Cas. 411. Starting with these basic principles, the conclusion is evident that, in the enactment of this new law, the Legislature declared it to be the policy of this state that every hazardous industry within the purview of the act should bear the burden arising out of injuries to its employes; and that it was the further policy of the state to do away with the recognized evils attaching to the remedies under existing forms of law and to substitute a new remedy that should be ample, full, and complete, reaching every injury sustained by any workman while employed in any such industry, regardless of the cause of the injury or the negligence to which it might be attributed. We can conceive of no language the Legislature might have employed that would make its purpose and intent more ascertainable than that made use of in the first section of the act. To say with appellant that the intent of the act is limited to the abolishment of negligence as a ground of action against an employer only is to overlook and read out of the act and its declaration of principles the economic thought sought to be crystalized into law, that the industry itself was the primal cause of the injury and, as such, should be made to

bear its burdens. The employer and employe as distinctive producing causes are lost sight of in the greater vision, that the industry itself is the great producing cause, and that the cost of an injury suffered in any industry is just as much a part of the cost of production as the tools, machinery, or material that enter into that production, recognizing no distinction between the injury and destruction of machinery and the injury and destruction of men in so far as each is a proper charge against the cost of production. The Legislature in this act was dealing, not so much with causes of action and remedies, as with this great economic principle that has obtained recognition in these later years, and it sought in the use of language it deemed apt to embody this principle into law. That in so doing the legislative mind was intent upon the abolishment of all causes of action that may have theretofore existed, irrespective of the persons in favor of whom or against whom such right might have existed, is equally clear from the language of section 5 of the act, containing a schedule of awards, and providing that each workman injured in the course of his employment should receive certain compensation, and "such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever." Referring again to section 1 of the act and the declaration of its exercise of police power by the state, to the end that it may advance the welfare of its citizens injured in any hazardous undertaking, we find this expression of intention: "* * * All phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extrahazardous work and their families and dependents is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise pro-

vided in this act; and to that end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished." For these reasons we are of the opinion that the compensation provided by the act in case of injury to any workman in any hazardous occupation was intended to be exclusive of every other remedy, and that all causes of action theretofore existing, except as they are saved by the provisos of the act, are done away with.

(4) Upon the second point we think there is no room for argument. The first clause of the title indicates that it is an act relating to the compensation of injured workmen in any industry of the state, and the employment of the language further on in the title, "abolishing the doctrine of negligence as a ground for recovery of damages against employers," is indicative of the evil the act seeks to overcome rather than the new remedy created. The title is plainly broad enough to indicate that the act is intended to furnish the only compensation to be allowed workmen subsequent to its becoming law, and as such clearly includes any and all rights of action theretofore existing in which such compensation might have been obtained.

The second point is therefore overruled, and the judgment affirmed.

Crow, C. J., and Mount, Parker and Fullerton, J. J., concur.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 2287.

MARY A. MEESE, MAY MEESE, EDITH MEESE, ANNA MEESE, ALFRED MEESE, A MINOR, CATHERINE MEESE, A MINOR, LIZZIE MEESE, A MINOR, WILLIE MEESE, A MINOR, BENNIE MEESE, A MINOR, by their Guardian Ad Litem, MARY A. MEESE,

Plaintiffs in Error,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, a corporation,

Defendant in Error.

Opinion.

Before GILBERT, ROSS and MORROW, Circuit Judges.

MORROW, Circuit Judge, after stating the facts, delivered the opinion of the Court:

1. The question on this appeal arises out of an act of the Legislature of the State of Washington, approved March 14, 1911, known as and designated the "Workmen's Compensation Act" (Chapter 74, Session Laws of the State of Washington, p. 345), relating to the compensation of workmen in extrahazardous employments in that state.

The constitutionality of the act is not attacked by either party, and the fact that the death of the decedent was due to the wrongful act and negligence of the Railway Company is not denied by that company. But the position taken by the plaintiffs in error (the plaintiffs in the court below), and controverted by the defendant in error, the Northern Pacific Railway Com-

pany, is, that the Workmen's Compensation Act of the State of Washington does not and never was intended to deny to or take from the heirs or personal representatives of a deceased person their right of action for damages against the person or corporation whose wrongful act caused the death of such deceased person. The contention of the plaintiffs in error is: That the death of Benjamin Meese having been caused by the wrongful act and negligence of the Northern Pacific Railway Company, his heirs, the plaintiffs in error herein, are not barred by the provisions of the Workmen's Compensation Act from maintaining their statutory right of action against the Railway Company, by reason of the fact that at the time the decedent was killed he was in the employ of the Seattle Brewing Company, and acting in the discharge of his duties as an employe of that company.

The intent of the legislature of the State of Washington with respect to the scope and purview of the Compensation Act must be ascertained by a construction of the act as a whole, keeping well in view the evils which, as declared by the act itself, is was intended to remedy.

The primary title of the act is as follows:

"Relating to compensation of injured workmen."

The secondary title is as follows:

"An act relating to the compensation of injured workmen in our industries, and the compensation to their dependents where such injuries result in death, creating an industrial insurance department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the non-observ-

ance of regulations for the prevention of such injuries and for violation of its provisions, asserting and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers and depriving the courts of jurisdiction of such controversies, and repealing sections 6594, 6595 and 6596 of Remington and Ballinger's Annotated Codes and Statutes of Washington, relating to employes in factories, mills or workshops where machinery is used, actions for the recovery of damages and prescribing a punishment for the violation thereof."

The act contains its own declaration of legislative policy in the following specific terms:

"Section 1: The common law system governing the remedy of workmen against employers for injuries received in hazardous work is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workman and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents, is hereby provided regardless of questions of fault, and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of actions for such

personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided."

Section 2 contains an enumeration of the extra hazardous occupations or works to which the act is intended to apply.

Section 3 contains particular definitions of the terms employed in the act.

Sections 4 to 19, inclusive, set forth the schedules of contribution and compensation of the act, and provide for the giving of notice under the act, and the methods of enforcement of the act.

Section 20 provides that any employer, workman, beneficiary or person feeling aggrieved at any decision of the department created by the act, affecting his interests under the act, may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county of his residence.

Sections 21 to 26, inclusive, create an Industrial Insurance Department, and impose the administration of said act upon that department.

By sections 27 and 28 it is provided, that if any employer shall be adjudged to be outside the lawful scope of the act, the act shall not apply to him or his workmen, and that if the provisions of the act relative to compensation for injuries to or death of workmen become invalid because of any adjudication, or be repealed, such repeal or the rendition of the final adjudication of invalidity shall not be computed as a part of the time limited by law for the commencement of any action relating to such injury or death.

Section 29 appropriates the sum of $1,500,000.00, or so much thereof as shall be necessary, for the purposes of the act.

In section 30 it is provided that sections 8, 9 and 10

of the act approved March 6, 1905, entitled "An act providing for the protection and health of employes in factories, mills or workshops, where machinery is used, and providing for suits to recover damages sustained by the violation thereof, and prescribing a punishment for the violation thereof" (Sections 6594, 6595 and 6596 of Remington and Ballinger's Annotated Codes and Statutes of Washington, referred to in the title of the act), "and repealing an act entitled, 'An act providing for the protection of employes in factories, mills or workshops, where machinery is used, and providing for the punishment for the violation thereof, approved March 6, 1903,' and repealing all other acts and parts of acts in conflict therewith" shall be repealed, except as to any cause of action which shall have accrued thereunder prior to October 1, 1911.

Section 31 relates to the distribution of the funds in case of a repeal of the act.

Section 32 provides that the act shall not affect any action pending or cause of action existing on the 30th day of September, 1911.

With respect to the title of the act it is to be observed that it relates to the compensation of injured workmen in industries in the State of Washington, and the compensation to their dependents where such injuries result in death; but it does not purport to relate to the statutory right of action for damages given to heirs or personal representatives of a deceased person, when the death of such person is caused by the wrongful act or neglect of another. Again, the title recites that the act contains provisions abolishing the doctrine of negligence as a ground of recovery of damages against employers, but it does not recite that the act contains provisions abolishing the statutory right of action in favor of the heirs and per-

sonal representatives of a deceased person, where the death of such person is caused by the wrongful act or neglect of another, not an employer; and the act does not in fact abolish such right of action in express terms. The title recites that the act abolishes certain sections of Remington and Ballinger's Annotated Codes and Statutes of Washington; but it does not recite that the act repeals sections 183 and 194 of that Compilation of Codes and Statutes, under which this action was brought, and the act does not in fact in express terms repeal either of those sections of the law. These two sections, so far as they relate to this case, provide as follows:

"Section 183 * * * * * When the death of a person is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death."

"Section 194: No action for a personal injury to any person occasioning his death shall abate, nor shall such right of action determine, by reason of such death, if he have a wife or child living; * * * * * but such action may be prosecuted or commenced and prosecuted in favor of such wife or in favor of the wife and children * * * * *."

With respect to the declaration of policy contained in the first section of the act, it is to be noticed that it is specifically directed against "the common law system governing the remedy of workmen against employers for injuries in hazardous work." The present action is not one arising under the common law system, and it is not against the employer of the decedent. The plaintiffs in error, as the wife and children of the decedent, had no right of action against the defendant at common law, whether the defendant was an employer or a third person not an employer. Their

right of action is purely statutory, and is based upon Sections 183 and 194 of the above mentioned Codes and Statutes of Washington.

The question to be determined is this: Did the compensation act repeal these sections of the prior statute law? It did not by any express provisions of the act. Did it do it by implication?

The contention of the defendant in error is that these sections have been repealed, so far as plaintiffs' right of action against the defendant in error is concerned, and that the plaintiffs must recover, if at all, under the compensation act. This contention is based first, upon the declaration contained in the first section of the compensation act concerning the exercise of the police power of the state. The declaration is "that all phases of the premises are withdrawn from private controversy, and sure and certain relief for workmen injured in extra hazardous work, and their families and dependents, is hereby provided, regardless of questions of fault, and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that end all civil actions and civil causes of action for such personal injuries, and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided." The scope of this provision of the act is clearly limited primarily by the word "premises." All phases of the "*premises*" are withdrawn from private controversy. What are the "*premises*"? The "*premises*" are the matters stated in the context, namely: "the *common law* system governing the remedy of *workmen against employers* for injuries received in hazardous work." This withdrawal does not include the general liability for a personal tort, nor does it include specifically a right of action under the state statute for injuries resulting in death caused by

the wrongful act or neglect of another not an employer. The maxim *noscitur a sociis* applies here and determines the proper interpretation of the language. (*Kelley v. City of Madison*, 43 Wis. 638; 28 Am. Rep. 576; *McGaffin v. City of Cohoes*, 74 N. Y. 387, 30 Am. Rep. 307.)

The defendant claims further that its contention is supported by the proviso found in Section 3 of the act, relating to the definition of words used in the act, "that if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children or dependents, as the case may be, shall elect whether to take under this act or seek a remedy against such other, such election to be in advance of any suit under this section"; but this proviso is limited in express terms to "an injury to a workman occurring away from the plant of his employer." If the injury to a workman occurs at the plant of his employer the proviso does not apply. In the present case the injury did not occur to the workman away from the plant of his employer. It occurred while he was in the employ of his employer and at the plant of his employer. The fact that the injury was due to the negligence and wrong of another not in the same employ is not sufficient under this section to bring the case within the provisions of the compensation act; but it is not necessary for us to decide that question. The question here is, have the plaintiffs in error a remedy under the prior statute? They have if that statute has not been repealed by the compensation act. It is not claimed that it has been repealed by that act in express terms. Can it be said that it has been repealed

by implication. It is plain that it has not, when we consider that by the compensation act it is provided that if a workman is injured away from the plant of his employer by the negligence or wrong of another not in the same employ, and the injury results in the death of the workman, his widow, children or dependents may elect whether to take under the compensation act, or seek a remedy against such other. What that remedy against the other is, is clearly indicated by the remainder of the section pointing to a right of action under the prior statute. The remainder of the section is as follows:

"* * * * * If he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the accident fund; if the other choice be made, the accident fund shall contribute only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the state may be prosecuted or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department."

A cause of action "against such other" which "shall be assigned to the state for the benefit of the accident fund" must be based upon the prior statute. If based upon the prior statute that statute was not repealed, but continued in force.

It is further contended by the defendant in error, that the first clause of Section 5 of the compensation act provides a sure and certain remedy to workmen in case of injury, or their dependents in case of death,

regardless of the right of action against any person whomsoever, and takes away such right of action. The clause is as follows:

"Each workman who shall be injured whether upon the premises or at the plant or, he being in the course of his employment, away from the plant of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedules, and except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever."

The last words of this clause, taken alone, might be held to be sufficiently broad to justify the plaintiffs in error in claiming out of the accident fund the compensation provided in the act, and if such claim were made and allowed it would undoubtedly "be in lieu of any and all rights of action whatsoever, against any person whomsoever." But further than this we do not think the clause can be extended. The clause does not abolish or take away the right of action. It merely provides that an award under the Act "shall be in lieu of any and all rights of action whatsoever against any person whomsoever."

The conclusion we have reached is, that the repeal of sections 183 and 194 of Remington and Ballinger's Compilation of the Codes and Statutes of Washington is not within the title of the compensation act; that the repeal of these sections is not within the declared policy of the compensation act as applied to the facts charged in the complaint in this case; that these sections have not been repealed by the compensation act either expressly or by implication; but, on the contrary, the implication to be drawn from the provisions of the statute is that these sections have not been repealed. These conclusions are abundantly supported

by the general rules governing the construction of statutes.

2. It is a fundamental rule in the construction of a statute that its purview can be no broader than its title, or, as stated by Sutherland, in his work on Statutory Construction, the title of the act must agree with the act itself, by expressing its subject; the title will fix bounds to the purview, for the act cannot exceed the title subject nor be contrary to it.

"An act will not be so construed as to extend its operation beyond the purpose expressed in the title. It is not enough that the act embraces but a single subject or object, and that all its parts are germane; the title must express that subject, and comprehensively enough to include all the provisions in the body of the act. The unity and compass of the subject must, therefore, always be considered with reference to both title and purview. The unity must be sought, too, in the ultimate end which the act proposes to accomplish, rather than in the details leading to that end. * * * * * The title cannot be enlarged by construction when too narrow to cover all the provisions in the enacting part, nor can the purview be contracted by construction to fit the title." (Lewis' Sutherland Statutory Construction, Sec. 120.)

"The title of an act defines its scope; it can contain no valid provision beyond the range of the subject there stated." (Ibid., Sec. 145.)

In the case of *Diana Shooting Club vs. Lamoreux*, 89 N. W. 880, the Supreme Court of Wisconsin, applying the above rule to the case then under consideration, said:

"When one reading a bill, with the full scope of the title thereto in mind, comes upon provisions which he could not reasonably have anticipated because of their being in no way suggested by the title in any reason-

able view of it, they are not constitutionally covered thereby. But in applying that rule, this other rule, which has been universally adopted, must be kept in mind: The statement of a subject includes, by reasonable inference, all those things which will or may facilitate the accomplishment thereof."

We are not asked in the present case to give effect to some clause of the act not embraced in the title (for, as we have observed, the act contains no provisions respecting injuries received by an employe in the course of his employment and at the plant of his employer, occasioned by the wrongful act and negligence of another not in the same employ and not connected in any way with the employe or with the employer); but we are asked to read into the statute under consideration, by construction, a meaning and an extent not covered by or included within the title.

We are of opinion that there is nothing in the title of the act which by direct words, or by any fair and reasonable intendment or inference, can be construed to include within the scope of the act, and, therefore, to deny to the plaintiffs in error in this case, a right of action of the nature of that asserted by them, or which can be construed as depriving the courts of jurisdiction of a controversy in the nature of the one now before this court.

3. It will be noted further that there are expressly designated in the title of the act under consideration, certain sections of Remington and Ballinger's Annotated Codes and Statutes of the State of Washington, to wit: Sections 6594, 6595 and 6596 thereof, which are by said act expressly repealed. But the very obvious purpose of the act (if the interpretation insisted upon by the defendant in error be the correct one), would be to repeal, in addition to the sections expressly enumerated, Sections 183 and 194, providing for a

right of action and the survival of a right of action in favor of the heirs or personal representatives of decedent. But the express repeal of certain acts implies an intent not to repeal other sections. As said by the Supreme Court of New York in the case of *Bowen vs. Lease*, 5 Hill, 226:

"The invariable rule of construction in respect to the repealing of statutes by implication is, that the earliest act remains in force, unless the two are manifestly inconsistent with and repugnant to each other; or unless in the latest act some express notice is taken of the former, plainly indicating an intention to abrogate it. As laws are presumed to be passed with deliberation, and with full knowledge of all existing ones on the same subject, it is but reasonable to conclude that the legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable."

Furthermore, if it was the intent of the legislature to repeal the former act, that intent should have been clearly expressed.

"There can be no intent of a statute not expressed in its words. While the object of all construction, and the purpose of all rules of interpretation is to ascertain the legislative intent, and while, in construing a particular part of a statute, the whole act may be regarded, and all other acts bearing upon the subject, and all extraneous circumstances which the legislature may be supposed to have had in mind, may be properly taken into consideration, yet the intent which is finally arrived at must be an intent consistent with, and fairly expressed by, the words of the statute themselves. * * * * * The intent to be ascertained and enforced is the intent expressed in the words of the statute, read in the light of the constitution and the fundamental

maxims of the common law, and not an intent based upon conjecture or derived from external considerations." (Sutherland, Statutory Construction Sec. 388.)

In Section 499 of the work of the same learned author, it is said:

"It is presumed that the legislature does not intend to make any change in the existing law beyond what is expressly declared."

4. The opinion of the Supreme Court of the State of Washington, dated November 28th, 1913, in the case of *Peet vs. Mills*, (Advance Sheets, Washington Decisions, page 315), has been called to our attention by the defendant in error, in support of the position taken by it in the case at bar. We are unable to agree with counsel that the Supreme Court of the State of Washington in that case reached a conclusion different from that reached by us in the present case. In the Washington case the plaintiff, Peet, while in the employ of the Seattle, Renton and Southern Railway Company, as a motorman, was injured in a collision between two of the railway company's trains. The defendant, Mills, was then the president of the railway company, and the plaintiff in his suit sought to hold him personally responsible for the injuries because of the allegations that when Mills assumed control and management of the railway company, it was equipped with a block signal system for use in foggy weather, which the defendant failed to operate; and that when complaint was made by the train operators of the great danger of operating the trains without the aid of the block signals, a promise was made by the defendant, Mills, to have the block signals working during foggy weather, which promise the defendant failed to keep, and as a consequence of his negligence in so failing, the plaintiff was injured. The trial court

sustained a demurrer to the complaint, and the plaintiff electing to stand upon his complaint, the action was dismissed and an appeal taken to the Supreme Court. The decision of the lower court was affirmed.

In whatever light the Supreme Court of the State of Washington may have viewed the case, no portion of the language used by it in that case can be claimed to cover the facts of the case which we now have under consideration. In the Washington case the injury was alleged to have been caused by the negligence of the defendant who was the president of the railway, that is, in the same employ with the plaintiff. In the case now at bar the death of the decedent is alleged to have been caused by the negligence of the Northern Pacific Railway Company, a party not in the same employ with the decedent, and in no manner connected with said employment. The Washington case, viewed from this standpoint, comes within the express words of the statute; the present case does not. Here we have an entirely different state of facts, calling for the application of entirely different principles of law; and, as we view it, the conclusions we have reached are in no sense conflicting or inconsistent with the opinion in the Washington case.

The decision of the lower court is reversed, with directions to overrule the demurrer.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

NORTHERN PACIFIC RAILWAY COMPANY,
Petitioner,
vs.
MARY A. MEEKER, ET AL.,
Respondents.
No. 133.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Brief of Respondents

GOVNOR TEATS,
LEO TEATS,
RALPH TEATS,
Attorneys for Respondents.

1215 Fidelity Building,
Tacoma, Washington.

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Brief of Respondents

STATEMENT OF THE CASE

This action was brought on the part of the respondents under the laws of the State of Washington for the wrongful death of their husband and father, Benjamin Meese, caused by the negligence of the petitioner.

Rem. & Bal. Ann. Code of Washington provides:

Sec. 183. * * * When the death of a person is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death.

Sec. 194. No action for a personal injury to any person causing his death shall abate nor shall such right of action determine by reason of such death, if he have a wife or child living * * * but such action may be prosecuted or commenced and prosecuted in favor of such wife or in favor of the wife or children. * * *

THE COMPLAINT charging negligence is as follows:

II.

On the 12th day of April, 1913, and for a long time prior thereto, Benjamin Meese, deceased, was in the employ of the Seattle Brewing & Malting Company, in its plant located at Georgetown in the city limits of Seattle, King County, Washington; and as part of his duty under his employment with the said Brewing Company was to assist in loading beer upon the cars and also to place Government stamps upon the barrels, half barrels, quarter barrels, when filled with beer and before the same were loaded into the railroad cars spotted at the proper

place at said Brewing plant for said loading. That at the plant, the said defendant had a railroad track running alongside of the warehouse and buildings containing the finished products to be shipped by said Brewing Company, which said siding was connected with defendant company's switches, siding and main tracks; and the said defendant company furnished the said Brewing Company cars on said track to be loaded with products of said plant to be carried by said defendant company to their different points of destination. That after the said cars were placed upon said siding of said defendant company, the cars were spotted and moved by the Brewing Company to different places necessary for the loading on said siding, with appliances furnished and operated by the said Brewing Company; and when the said cars were so placed upon the said siding and spotted at the proper places for loading the cars, said Brewing Company used skids and other appliances extending from the car into the warehouse of the Brewing Company for the purpose of rolling the kegs, barrels, quarter barrels or half barrels of the finished product of the Brewing Company from the plant into the car; and the said Brewing Company employed a crew of men called loaders for the purpose of loading said car with their said finished product and also with ice sometimes necessary

in the shipment of the said finished product, and at the same time of loading the said car the said Brewing Company employed workmen to place the necessary Government stamps upon each of the receptacles of the said finished product, which was usually done while said receptacles were moving along the said skids; and the workmen who performed said work usually stood upon the floor or platform beneath the skids and which platform ran alongside of the building and plant of the Brewing Company and into the opening in the building or plant where the finished product was taken from the storehouse or plant. That while loading and filling the said car, the movement of the said car, especially without notice to the loading crew and the employee who placed the Government stamps upon the receptacles, was dangerous to the workmen of the Brewing Company, as the movement of the said car would cause the skids and receptacles of the finished product to fall upon the employees of the Brewing plant and injure them.

III.

That at the time of the accident herein complained of, the deceased husband and father was placing Government stamps upon the receptacles, half barrels of the finished product of the Brewing Com-

pany, in his regular course of employment with the Brewing Company, and located to the south of the skids and half barrels as they moved from the plant of the Brewing Company into the car.

IV.

That while the said deceased, Benjamin Meese, was so employed placing the Government stamps upon the half barrels and filling and loading a car upon said siding, on the 12th day of April, 1913, at about the hour of 6:10 o'clock of the evening of said day, the said defendant company, by and through its switchman, locomotive engineer and employees, carelessly and negligently without warning to the deceased, Benjamin Meese, and without warning to any of the loading crew, then in the employ of the said Brewing Company loading the car upon the said siding, knowing that said men were at that time loading the car, caused a number of cars to come down the said siding alongside of the plant of the said Brewing Company with tremendous force and momentum, striking the car then being loaded with tremendous force and momentum, knocking the car along the track causing the skid then being used by loading crew to load the said car to fly backwards and against the deceased, causing large number of half barrels loaded with the

finished product of the Brewing Company upon the said skids to fall upon the deceased, maiming and injuring him so that from said injuries so received through the carelessness and negligence of the defendant company the said Benjamin Meese, deceased, died on the morning of the 17th day of April, 1913, leaving his widow and children, parties plaintiff herein.

A DEMURRER was interposed on the part of the railway company in the District Court on the following grounds:

I.

"That the plaintiff's complaint fails to state facts sufficient to constitute a cause of action against the defendant for the reason:

(a) That there is no sufficient statement of facts set forth in said complaint to show that the accident referred to therein was the result of negligence or want of care on the part of the defendant.

(b) That there is no authority in law under which the plaintiff's action can be maintained as against this answering defendant, it appearing from the complaint that Benjamin Meese, on account of whose wrongful death this action was brought, sustained the injuries of which complaint is made, at the place of work and plant of his employer, and

that plaintiff's claim comes within the terms of Chapter 74 of the Session Laws of the State of Washington for 1911, being an act relating to compensation of injured workmen.

II.

That the Court has no jurisdiction of the subject matter of this action, the injuries to the plaintiff's decedent having occurred while he was employed at the works and plant of his employer, and all rights of action by reason of the matters set forth in the plaintiff's complaint have been withdrawn from the jurisdiction of the Court by Chapter 74 of the Session Laws of Washington for 1911 known as the Workmen's Compensation Act."

The demurrer was sustained.

Meese et al. vs. N. P. Ry Co., 206 Fed. 222.

Plaintiffs below wishing to stand on their complaint without amendment, judgment was entered dismissing the case and for costs against plaintiffs below.

Writ of error was sued out in the Circuit Court of Appeals for the Ninth Circuit and upon hearing the District Court was reversed with directions to overrule the demurrer.

Meese et al. vs. N. P. Ry. Co., 211 Fed. 254.

RESPONDENTS' CONTENTIONS

1st. It is our contention that the Workmen's Compensation Act of the State of Washington, relied on by the railway company to defeat its liability, does not and never was intended to deny to or take from the heirs or personal representatives of the deceased husband and father, their right of action for damages against the railway company, it not being an employer of the deceased whose wrongful act caused his death; in other words, that the death of Benjamin Meese having been caused by the wrongful act and negligence of the Northern Pacific Railway Company, not his employer, his heirs, the respondents herein, are not barred by the provisions of the Workmen's Compensation Act from maintaining their statutory right of action against the railway company by reason of the fact that at the time the deceased was injured, from which injuries he died, he was in the employ of the Seattle Brewing Company and acting in the discharge of his duties as an employee of that company and at the plant of that company.

2nd. That the Workmen's Compensation Law was a product of certain conditions existing between workmen and employers in our state by reason of the fellow-servant, assumption of the risk and con-

tributory negligence doctrine of the common law in the first place and the waste of money paid by employers to casualty companies, the uncertainty of relief, the abuses of such companies towards the injured workman, producing estrangement between workmen and employer, inimical to all concerned including the public, and the expense to the state from increased personal injury litigation between master and servant.

3rd. That the Workmen's Compensation Law was not intended and does not relate to the right of action of a workman or his heirs against negligent third persons not his employers, except as provided in Secs. 3 and 5 of the Act and then at his option.

4th. "That the manifest intent of the law is not to cover and compensate for accidents generally but to cover accidents occurring in those employments and occupations which are specifically classed as and which may be found by the Commission to be extra hazardous."

Guerrieri vs. Industrial Ins. Comm. 84 Wash. 266.

But the Supreme Court of the State of Washington has not by construction or otherwise extended

the application of the law to cases similar to the one at bar, and when called upon to construe the law in a case of this sort will follow the construction placed upon it by the Circuit Court of Appeals for the Ninth Circuit in 211 Fed. 254.

5th. That to extend the application of the Workmen's Compensation Law to right of action of a workman against a third person under the facts of this case, would be unconstitutional, and would be a discrimination against the respondents and not an equal protection under the law.

ARGUMENT

It will be conceded, I presume, that a right of action for wrongful death is a matter of statute. The statute in force at the time of the enactment of the Workmen's Compensation Law was Sections 183 and 194 of Rem. & Bal. Code set out above.

THE STATUTE PERMITTING ACTION FOR WRONGFUL DEATH NOT REPEALED.

The Compensation Act did not undertake to abolish the right of action or treat with it in any way where the workman was injured or killed by any person not his employer. The title of the Compensation Act is in part as follows:

"An Act relating to the compensation of injured workmen in our industries and the compensation to their dependents where such injuries result in death * * * *abolishing the doctrine of negligence as a ground for recovery of damages against employers* and depriving the courts of jurisdiction in such controversies and repealing Sections 6594, 6595 and 6596 of Rem. & Bal. Code and Stats. of Washington, relating to employees in factories, mills and work shops where machinery is used, actions for the recovery of damages * * *." Sections 6594-5-6 were part of our factory act; laws of 1905, pages 168-9.

Sec. 6594 relates to the amount of damages an injured employee was allowed to recover for violation of the factory act.

Sec. 6595 relates to the notice of injury and prescribes that the notice shall be prerequisite to the commencement of an action.

Sec. 6596 permitted actions under other statutes or at common law.

The point we wish to make is that from the title of the act the Compensation Law was dealing with actions between master and servant, and the act repealed and only undertook to repeal parts of the act dealing with actions for personal injury between master and servant. "It is the fundamental rule in the construction of a statute that its purview can be no broader than its title, the title of the act must agree with the act itself by expressing its subject; the title will fix the bounds to the purview for the act cannot exceed the title subject nor be contrary to it."

Meese case, 211 Fed. 261.

Citing and quoting Lewis, Sutherland Stat. Const. Secs. 120-145.

Diana Shooting Club vs. Lamoreaux, 114 Wis. 44;

89 N. W. 880;

91 Amer. State Reps. 898.

The Supreme Court of Washington holds to this rule also.

State ex rel. Swan vs. Taylor, 21 Wash 672.

Interpretation of the Laws of 1895, page 321, as to whether or not it worked an appeal to the amendment of the Laws of 1893. The law was not repealed by the title of the act. Held, the end of all interpretation is to ascertain the legislative intent and in the ascertainment of it, the title which has been given to the enactment is always a proper subject for consideration.

Quoting Endlich Interpretation of Statutes Sec. 59:

"The language of an act should be construed in view of its title and its lawful purposes * * * the subject or object expressed in the title fixes a limit to the scope of the act."

Sutherland Statutory Const. 211. See also 102. Held, that the act of 1893 was not repealed.

Section 30 of the Compensation Law contains the repealing clause, which simply provides that existing law providing that the installation or maintenance of devices, means or methods for the prevention of accidents in extra hazardous work, shall remain in force except the three sections above set out which are repealed.

"The express repeal of certain acts implies an intent not to repeal other sections."

Meese case, 211 Fed. 262.

Citing and quoting from *Bowen vs. Lease*, 5 Hill 226;

Sutherland Statutory Const. Secs. 388-499.

"The conclusion we have reached is that the repeal of sections 183 and 194 of Rem. & Bal. Compilation of the Codes and Statutes of Washington is not within the title of the Compensation Act, that the repeal of these sections is not within the declared policy of the Compensation Act as applied to the facts charged in the complaint in this case, that these sections have not been repealed by the Compensation Act either expressly or by implication; but, on the contrary, the implication to be drawn from the provisions of the statute is that these sections have not been repealed."

Meese case, 211 Fed. 261.

The scheme and plan of the law was to treat with the relation of master and servant, change employers' liability to industrial liability.

It seems permissible for courts to review the conditions leading up to the law which the law is made to correct, so a little history of the Washington Workmen's Compensation Act will aid us in determining the scope and purpose of the law.

A large majority of the people of Washington live west of the Cascades. They are chiefly employed in

mining, logging and the manufacture of lumber, wood and materials from the forest, shipping, factories and work shops. The country was new and our industries new and as a result the industrial accidents were greater than they should have been. In every town or city in Western Washington one constantly met with cripples, maimed and injured in these industries. Personal injury cases between master and servant occupied more than half the time of our courts, although not more than fifteen per cent of the injured had any claim for liability against their employers and not more than ten per cent found their way in the courts asking compensation. Fully eighty-five per cent of the injuries were caused through "Dangers incident to or inherent in the industry," "negligence of fellow workmen" and dangers assumed by the workmen. Small concerns could not pay a verdict when recovered and many were thrown into bankruptcy.

In time casualty insurance companies undertook to take over the fight between master and servant and pay the employer his loss. These companies assumed the matter of settlement with the injured workman, or his wife and children—unconscionable bargains, when any settlement was made, characterized the settlements. Hungry children, unpaid rent, grocery bills and a few glittering gold twenty

dollar pieces resulted in "good settlements" for the casualty company. The friends of the injured or the public bore the burden of non-liability claims and the insufficiently compensated were sooner or later thrown on the charity of their friends or the public.

After judgment entered, the employer, in too many cases, was defeated in his recovery for loss through some technicality claimed on the part of the casualty company, or by chance the judgment exceeded the stipulated amount of the policy, usually $5,000.00, the employers had to pay the excess. This casualty scheme of protection was a great waste. It cost too much for the benefits received. Under the policy, the employer was prohibited from treating with his injured workmen; he must be turned over to the merciless claim agent of the casualty company. The workmen of that industry objected —and many well organized concerns were compelled to close for the men refused to work after an injury to one of their fellows. Instead of a co-operative feeling between workmen and employer, there was friction and a divorcement of that good will, necessary for successful undertakings. Conditions became intolerable. There must be some remedy. Something must be done. The employers and the workmen of our state were ready and anxious to

amend things. How? What? The many did not know. A few had studied the schemes of compensation tried out in the states of Europe. At the suggestion that we get together and do something, a large number of employers, workmen and people who had studied "The Way Out," voluntarily met at Tacoma in July, 1910, had the Governor of the State preside at our meeting to give it an official cast, and after several days' discussion had the Governor appoint a commission to draft a law along the lines of the compensation laws of Continental Europe, for presentation to the 1911 session of our Legislature. The bill was drawn and the main features of which are now the Washington Workmen's Compensation Law under consideration.

The subject matter, the central idea, was the correction of the existing abuses arising from personal injury in our industries that so concerned the relation of master and servant.

Let the commission verify my statements.

"It took us little time, however, to reach an agreement with the Illinois commission, that the present system of law in relation to the matter is 'unjust, haphazard, inadequate and wasteful, the cause of enormous suffering, of much disrespect for law, and of a badly distributed burden upon society'; and with the New York commission, that 'present conditions as to employers' liability are intolerable'; and

with Governor Hughes of New York, that 'our present methods are wasteful and result in injustice. * * * As a result the workmen do not receive proper compensation, and employers pay large amounts that do not reach them'; and with President Roosevelt, in urging upon Congress the adoption of the compensation system for workmen employed by the government, that 'it is a matter of humiliation to the nation that there should not be on our statute books provision to meet and partially atone for cruel misfortune when it comes upon a man, through no fault of his own, while faithfully serving the public. In no other prominent industrial country in the world could such gross injustice occur; for almost all civilized nations have enacted legislation embodying the complete recognition of the principle which places the entire trade risk for industrial accident (excluding, of course, accidents due to the wilful misconduct of the employee) on the industry as represented by the employer, which in this case is the government. * * * The same broad principle which should apply to the government should ultimately be made applicable to all private employers. * * * Where the states alone have the power they should enact the laws.'

The question of sure compensation to the injured workman, regardless of questions of negligence, has obtained for years in every country of Continental Europe. It has there given complete satisfaction and proved beneficial to employer and employee alike, and has removed one of the chief causes of friction and animosity between employer and employee."

The Law of Employers' liability never accounted for the negligence of those outside of that particular industry, for the negligence of an outsider was never accredited to the industry. It was a matter not under its control and for which it could in no wise be chargeable. The law of negligence applied to the one guilty of negligence. The field of investigation by this commission was bounded by the responsibility of the industry for personal injuries either through negligence or conditions incident to the industry.

The Enacting Clause limits the law to relation of master and servant, except *in certain cases.*

"An Act relating to the compensation of injured workmen in our industries, and the compensation to their dependents where such injuries result in death, creating an industrial insurance department, making an appropriation for its administration, providing for the creation and disbursement of funds for the compensation and care of workmen injured in hazardous employment, providing penalties for the non-observance of regulations for the prevention of such injuries and for violation of its provisions, ascertaining and exercising the police power in such cases, and, except in certain specified cases, abolishing the doctrine of negligence as a ground for recovery of damages against employers, and depriving the courts of jurisdiction of such controversies, and repealing sections 6594, 6595 and 6596 of Remington & Ballinger's Annotated Codes and Statutes of

Washington, relating to employees in factories, mills or work shops where machinery is used, actions for the recovery of damages and prescribing a punishment for violation thereof."

The *first exception* is contained in Sec. 3, as follows:

"That if the injury to a workman occurring away from the plant of his employer is due to the negligence or wrong of another not in the same employ, the injured workman, or if death result from the injury, his widow, children or dependents, as the case may be, *shall elect whether to take under this act or seek a remedy against such other*, such election to be in advance of any suit under this section; and if he take under this act, the cause of action against such other shall be assigned to the state for the benefit of the accident fund; if the other choice is made, the accident fund shall contribute only the deficiency, if any between the amount of recovery against such third person actually collected, and the compensation provided or estimated by this act for such case. Any such cause of action assigned to the state may be prosecuted, or compromised by the department, in its discretion. Any compromise by the workman of any such suit, which would leave a deficiency to be made good out of the accident fund, may be made only with the written approval of the department."

This exception clearly does not apply to the case at bar.

The *second exception*, if indeed it is an exception, is the first paragraph of Sec. 5:

"Each workman who shall be injured whether upon the premises or at the plant, or, he being in the course of his employment, away from the plant, of his employer, or his family or dependents in case of death of the workman, shall receive out of the accident fund compensation in accordance with the following schedule, and, except as in this act otherwise provided, such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever."

This phase of the law is cleared up by Judge Morrow:

"The last words of this clause, taken alone, might be held to be sufficiently broad to justify the plaintiff in error in claiming out of the accident fund the compensation provided in the act, and, if such claim were made and allowed, it would undoubtedly 'be in lieu of any and all rights of action whatsoever, against any person whomsoever.' But further than this we do not think the clause can be extended. The clause does not abolish or take away the right of action. It merely provides that an award under the act 'shall be in lieu of any and all rights of action whatsoever against any person whomsoever.' "

Meese case, 211 Fed. at page 261.

Preamble limits application of the law to Master and Servant.

"A Preamble is not without its uses. It is not to be entirely rejected where the statute is ambiguous, although it will not be resorted to to create a doubt or misunderstanding which otherwise does not ex-

ist. Where there is a doubt, it will be given its place as a component part of the act."

Huntworth vs. Tanner, Nov. 6, 1915, 45 Wash. Dec. 482;

.....*Pac.* .....

"A Preamble is said to be the key of a statute, to open the minds of the makers as to the mischiefs which are to be remedied, and the objects which are to be accomplished by the provisions of the statute." Bouvier, Law Dictionary, Title Preamble.

"Where the intent of the law is the object of inquiry, it is said that a preamble 'discloses the intention of the legislature in enacting the statute.'" *Hanly vs. Sims*, 175 Ind. 345, 93 N. E. 228, 94 N. E. 401.

"Without multiplying authorities or discussing those cited, we think it may be laid down as a general rule that if there is a broader proposition expressed in the act than is suggested in the preamble, the body or enacting part of the law will prevail over the preamble. But if the body of the act can be given a construction that is consistent with the purpose as declared in the preamble, it will be so construed."

45 Wash. Dec. 487.

The above case called for the construction and interpretation of a law passed by the people of our State abolishing employment agencies.

The preamble declared the purpose to be to abolish the collection of "*fees from workers* seeking em-

ployment." The act provided "It shall be unlawful to receive or collect any *fee from any person* seeking employment." The court held that a school teacher not being a *worker*, the law being doubtful as to its intent, the Preamble should govern the real intent of the law.

The Preamble or Section 1 of the Workmen's Compensation Act is as follows:

Sec. 1. DECLARATION OF POLICE POWER.

"The *common law system governing the remedy of workmen against employers for injuries received in hazardous work* is inconsistent with modern industrial conditions. In practice it proves to be economically unwise and unfair. Its administration has produced the result that little of the cost of the employer has reached the workmen and that little only at large expense to the public. The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable. The welfare of the state depends upon its industries, and even more upon the welfare of its wage-worker. The State of Washington, therefore, exercising herein its police and sovereign power, declares that *all phase of the premises* are withdrawn from private controversy, and sure and certain relief for workmen, injured in extra hazardous work, and their families and dependents are hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this act; and to that

end all civil actions and civil causes of action for such personal injuries and all jurisdiction of the courts of the state over such causes are hereby abolished, except as in this act provided."

"The scope of this provision of the act is clearly limited primarily by the word 'premises.' All phases of the 'premises' are withdrawn from private controversy. What are the 'premises?' The 'premises' are the matters stated in the context, namely, 'the common-law system governing the remedy of workmen against employers for injuries received in hazardous work.' This withdrawal does not include the general liability for a personal tort, nor does it include specifically a right of action under the state statute for injuries resulting in death caused by the wrongful act or neglect of another not an employer. The maximum '*Noscitur a sociis*,' applies here and determines the proper interpretation of the language.

Kelley vs. City of Madison, 43 Wis. 638.
28 *Am. Rep.* 576;
McGaffin vs. City of Cohoes, 74 N. Y. 387;
30 *Am. Rep.* 307."
Meese vs. N. P. 211 Fed. at pages 259-60.

THE CONTEXT DEALS WITH MASTER AND SERVANT

The context of the law itself, save the exceptions above quoted, clearly shows that the law was dealing with the relation of master and servant, the

dangers incident to the employment and the compensation from the industry for the injury sustained as a working hazard of the industry.

Sec. 2. Enumeration of Extra Hazardous Works.

"There is a hazard in all employment, but certain employments have come to be, and to be recognized as being, inherently constantly dangerous. This act is intended to apply to all such inherently hazardous works and occupations, and it is the purpose to embrace all of them, which are within the legislative jurisdiction of the state, in the following enumeration, and they are intended to be embraced within the term 'extra hazardous' wherever used in this act, to-wit: Factories, mills and work shops where machinery is used,' etc."

This is another restricting clause which can be extended to hazards not within a part of and under the control of the industry.

Sec. 4. SCHEDULE OF CONTRIBUTION.

"Insomuch as industry should bear the greater portion of the burden of the cost of its accidents, each employer shall, prior to January 15th of each year, pay into the state treasury, in accordance with the following schedule, a sum equal to a percentage of his total payroll for that year, to-wit: (the same being deemed the most accurate method of equitable distribution of burden in proportion to relative hazard.) * * *"

"The application of this act as between employers

and workmen shall date from and include the first day of October, 1911."

Here is a declaration that an industry must bear the burden of the costs of ITS ACCIDENTS and can we show that it was the intent of the Legislature to include an accident to one of its workmen which is not its accident?

The latter portion of the quotation "the application of this act as between employers and workmen shall date from and include the first day of October, 1911," has great significance. The law went into effect under our constitutional provision ninety days after the adjournment of the Legislature which was about June, 1911. The Act went into effect on that date in so far as the appointment of the Commissioners and the organization for administration necessary to carry on the law was concerned; but the law did not apply nor go into effect, which pertained to injuries and compensation, the relation of master and servant, until October 1st, 1911, and so when the Legislature said "the application of this act as between employers and workmen, etc," it limited the application of the act to employers and workmen.

Sec. 11. Non-Waiver of Act by Contract.

"No employer or workman shall exempt himself

from the burden or waive the benefits of this act by any contract, agreement, rule, or regulation, and any such contract, agreement, rule or regulation shall be pro tanto void."

This section is significant. Contracting away rights and liabilities of either party, employer and workmen in relation to things between themselves arising from the provisions of this law is prohibited. It can hardly be inferred that this section would relate to a right of action the workman, or his wife and children might have against a person not concerned in or having no relation with the industry, the workman or the employer.

The Supreme Court of Washington has declared in no uncertain terms its recognition of the law being applicable only to the relation of master and servant.

"That the statute here in question has the attribute of reasonableness, rather than that of capriciousness, seems incontrovertible. The evil it seeks to remedy is one that calls loudly for action. Accidents to workmen engaged in the industries enumerated in it are all but inevitable. It seems that no matter how carefully laws for the prevention of accidents in such industries may be framed, or how rigidly they may be enforced, there is an element of human equation that enters into the problem which cannot be eliminated and which invariably causes personal injuries and consequent finan-

cial losses to workmen engaged therein. Heretofore these losses have been borne by the injured workmen themselves, by their dependents, or by the state at large. *It was the belief of the Legislature that they should be borne by the industries causing them, or, perhaps more accurately, by the consumers of the products of such industries.* That the principle thus sought to be put into effect is economically, sociologically and morally sound, we think must be conceded. It is so treated by the learned counsel who have filed briefs in support of the auditor's contentions; it is so conceded by all modern statesmen, jurists, and economic writers who have voiced their opinions on the subject; and the principle has been enacted into law by nearly all of the civilized countries of Europe, by Australia, by New Zealand, by the Transvaal, by the principal provinces of the Dominion of Canada, and in a partial form at least by one or more of the South American Republics. Indeed, so universal is the conception that to assert to the contrary is to turn the face against the enlightened opinion of mankind. *The common law does not purport to afford a remedy for the condition here found to exist. It affords relief to an injured workman in only a limited number of cases; cases where the injury is the result of fault on the part of the employer and there is want of fault on the part of the workman. For the greater number of injuries traceable to the dangers incident to industry, no remedy at all is afforded.* The act, therefore, having in its support these economic and moral considerations, is not unconstitutional for the reasons suggested upon this branch of the argument."

State ex rel. Davis-Smith & Co. vs. Clausen,
65 Wash. 195-6.

"The Legislature has adopted the *idea* of *industrial insurance,* and seen fit to make that idea a workable one by putting its execution, as well as its administrative features, in the hands of a commission. It has abolished rights of actions and defenses and in certain cases denied the right of trial by jury. The Legislature has said to the man whose business is a dangerous one and the operation of which may bring injury to an employee, that he cannot do business without waiving certain rights and privileges heretofore enjoyed, and it has said to the employee that, inasmuch as he may become dependent upon the state, that he must give up his personal right of contract when about to engage in a hazardous occupation and contract with reference to the law. These demands are the fundamentals of our industrial insurance law. If the law is not administered as therein provided, it is not likely that a compulsory law such as it is could ever be adequately administered; for, aside from its humane purpose, it was adopted in order that the delay and frequent injustice incident to civil trials might be avoided.

"The remedy of the workman has been uncertain, slow and inadequate. Injuries in such works, formerly occasional, have become frequent and inevitable." Laws 1911, page 345.

"To uphold the law in the sense of sustaining the *idea of industrial insurance,* and to deny the right of executing it without the intervention of the courts, would throw us back on the original ground

and we should then, if consistent, hold the *idea* of industrial insurance to be beyond the limit of the police power."

State vs. Mountain Timber Co. 75 Wash. 581.

Decisions of Washington not adverse to decisions in this case by C. C. A. 9 C.

The petitioner urges that the decision of the Supreme Court of the State of Washington, *Peet vs. Mills*, 136 Pac. 685 and 76 Wash. 437, is contrary to the decision of the Circuit Court of Appeals. Some of the language in the Peet case would seem to bear out the contention of petitioner but the facts in the case are not similar at all to the facts in this case. Under the facts in the Peet case, the decision of the State Court is proper and consistent with the true spirit of the Compensation Act. Peet was a motorman in charge of a street car; Mills was the president of the street car system. He failed to operate the block system or lights whereby a collision occurred between two cars and Peet received his injuries. The only ground of recovery against Mills would be respondiat superior, that is to say, Mills' duty as president was to provide the proper signals. His negligence would be the negligence of the company as well as personal negligence or violation of the duty as president. Bearing the facts of the case in mind, the language used by the court

in no way covers the facts in this case and was not inconsistent with the Compensation Act. And the conclusion reached by the Supreme Court is not inconsistent with the conclusion reached by the Circuit Court of Appeals in this case. The discussion of that case is so well put by Judge Morrow in the Meese case that I feel justified in quoting all of that portion of the opinion: (211 Fed. at page 263.)

"The opinion of the Supreme Court of the State of Washington, dated November 28, 1913, in the case of *Peet vs. Mills*, 136 Pac. 685, has been called to our attention by the defendant in error, in support of the position taken by it in the case at bar. We are unable to agree with counsel that the Supreme Court of the State of Washington in that case reached a conclusion different from that reached by us in the present case. In the Washington case the plaintiff, Peet, while in the employ of the Seattle, Renton & Southern Railway Company, as a motorman, was injured in a collision between two of the railway company's trains. The defendant, Mills, was then the president of the railway company, and the plaintiff in his suit sought to hold him personally responsible for the injuries because of the allegations that, when Mills assumed control and management of the railway company, it was equipped with a block signal system for use in foggy weather, which the defendant failed to operate; and that, when complaint was made by the train operators of the great danger of operating the trains without the aid of the block signals, a promise was

made by the defendant, Mills, to have the block signals working during foggy weather, which promise the defendant failed to keep, and, as a consequence of his negligence in so failing, the plaintiff was injured. The trial court sustained a demurrer to the complaint, and, the plaintiff electing to stand upon his complaint, the action was dismissed and an appeal taken to the Supreme Court. The decision of the lower court was affirmed. In whatever light the Supreme Court of the State of Washington may have viewed the case, no portion of the language used by it in that case can be claimed to cover the facts of the case which we now have under consideration. In the Washington case the injury was alleged to have been caused by the negligence of the defendant, who was the president of the railway; that is, in the same employ with the plaintiff. In the case now at bar the death of the decedent is alleged to have been caused by the negligence of the Northern Pacific Railway Company, a party not in the same employ with the decedent, and in no manner connected with said employment. The Washington case, viewed from this standpoint, comes within the express words of the statute; the present case does not. Here we have an entirely different state of facts, calling for the application of entirely different principles of law; and, as we view it, the conclusions we have reached are in no sense conflicting or inconsistent with the opinion in the Washington case."

As an indication that the Supreme Court of Washington meant to limit its language in the Peet case, so much relied on by petitioner, as limited to

the right of action and the application of the law to master and servant, we refer to *Replogle vs. School District No. 1*, 84 Wash. 581, where again the court uses the same language by way of quotation from the Peet case. The plaintiff in that case was in the employ of the School District as a truck driver and storekeeper, working under the directions and control of one Mosley. That in due and regular course of his employment Mosley directed him to accompany the school district's electrician to a certain building in the district and there, under the electrician's direction, assist him in repairing an electric motor of the school district. That while holding a lantern under the direction of the electrician, the electrician negligently and carelessly caused the motor to revolve rapidly before the protecting sleeve had been placed in position, thereby a clutch pulley was caused to break and a portion of it struck and injured the plaintiff.

It was the contention of the School District that the plaintiff was not at work or employed by it in extra hazardous employment. But the Supreme Court held that his assisting in installing the dynamo was extra hazardous, quoting by way of argument and illustration the language relied upon by the petitioner in the Peet case. Then following the quotation the court said: (84 Wash. 586.)

"It would seem that the doctrine thus announced is controlling in this action. Had the respondent voluntarily assisted the electrician in the installation of the motor, or had his act in rendering such assistance been without the scope of his usual employment, a different question would be presented. But it is apparent that, at the time of his injury, he was properly and lawfully engaged in extra-hazardous employment in obedience to commands, and orders issued to him by those who were in lawful authority over him, and that it was his duty to be employed as he was then employed. This being the fact, it is apparent that, under the policy of the entire act, any claim he has for injuries by reason of the accident which occurred when he was engaged in such extra hazardous employment, has been withdrawn from the jurisdiction of the courts and comes within the industrial insurance act."

The Supreme Court of Washington has not extended, and we submit from the decisions so far rendered, we are justified in saying that it will not extend the application of the Compensation Act to causes of action for wrongful death caused through the negligence of third persons, strangers to the industry as petitioner contends for in this case.

EQUAL PROTECTION OF THE LAW

It is our further contention that even though the act would specifically limit a right of action under the fact and circumstances of the respondents here-

in (which of course it does not) that portion of the act would be unconstitutional and certainly no construction of the act where it does not specifically cover that subject matter, will be construed to that effect. The matter of equal protection of the law is a subject so thoroughly threshed out by this Honorable Court that possibly all that is necessary is a few citations.

Equal protection, as we understand it, means equality to all similarly situated. That is, not discriminating against some and favoring others and which affects alike all persons similarly situated.

Barbier vs. Connolly, 5 Supr. Crt. Rep. 357.

That is to say, if the law applies to all persons who are injured under like or similar circumstances to the injury which occurred to the deceased husband and father, then the law is not within the inhibition of the constitutional provision. But if the law does not treat all persons alike, then it is within the inhibition.

Mo. Pac. vs. Mackey, 8 Supr. Crt. Rep. 1161.

But if the law treats or applies to a class which is distinct within itself and has characteristics belonging to itself, such as the setting out of fires by locomotives, injuries which occur in mines or certain extra hazardous industries can be treated specially

by a law, either imposing other duties, or taking away different defenses, or changing the whole system of liability and compensation as is done in the Workmen's Compensation Act. But where the business of employers is not subject to peculiar dangers to the employees, dangers not characteristic to that particular industry, it is an unreasonable classification and not permitted. This is well put by the Supreme Court of Kansas:

"The equal protection mentioned by enforcement of this statute is denied by making one of two men engaged in the same business under precisely similar circumstances in the same town or building, a criminal, and imposing no penalty whatever upon the other for the same act. The only difference being that one works for a co-partnership and the other for a corporation."

State vs. Haun, 47 L. R. A. 369.

The construction held by the lower court means simply that the respondents herein cannot pursue the wrongdoer simply because by chance the deceased husband and father at the time of the accident was working in an extra hazardous vocation. Had he not been at work, but had stepped beyond the car or stood there talking with someone with whom and where he had a right, and not being in the employ of some extra hazardous industry there would be no question as to plaintiffs' right of action.

Then suppose again that Mr. Meese had been at work for a grocer who is not within the Act and was employed in taking out of the car barrels of syrup instead of barrels of beer and was injured through similar negligence, of course there would be no contention about his wife and children having a right to sue; and so you can go on with many cases of similar conditions, eliminating the point of employment, and they all would have their right of action. There is no particular class who work at loading and unloading cars and there is no law that attempts to classify such work, except as it is construed into the Act. If the plaintiff would have a right to pursue the Northern Pacific for their wrongful act had Mr. Meese not been at work, then does not the law or the construction of the law deny the plaintiffs' their equal protection? if, at the time of the accident and injury to Mr. Meese, his neighbor, Mr. Jones, had been at the same place, he being there rightfully, but not employed, and injured through the same negligence of defendant, the rule of the lower court would permit Mr. Jones to pursue his right of recovery against the railway company and deny Mr. Meese his right. Can a plainer case of the invasion of constitutional rights be made out? This question is thoroughly gone into in the case of *Cotting vs Goddard*, 22 Supr. Crt.

Rep. 30, construing a statute of Kansas where an attempt was made to impose certain limits on charges of certain corporations. So, in this case, the decision of the District Court places a limit upon the rights of the plaintiffs under certain conditions which are not placed upon others under similar conditions. The fact of the employment is only an incident, it is not a condition, for Meese, as well as many others, could have been in similar conditions loading cars for himself, assisting a neighbor, or passing the car on a public crossing, and under those conditions injured or killed, which would have fixed a liability beyond question.

See also *Gulf Ry. vs. Ellis*, 17 Supr. Crt. Rep. 255.

In that case the Supreme Court held invalid the Texas statute, that railroad companies, failing to pay claims less than $50.00 for labor, etc., within 30 days shall be liable for attorney's fee. As said in that case:

"The State may not say that all white men shall be subject to the payment of the attorney's fees of those successfully suing them and all black men not. It may not say all men beyond a certain age shall be alone thus subjected, or all men possessed of a certain wealth. These are distinctions which are not furnished proper basis for classifications. We must always rest upon some difference which bears a reasonable and just relation to the Act in respect

to which the classification is proposed and can never be made arbitrarily."

So in this case the State cannot say that the man, because he is in the employ of an industry, shall be denied his right of action against the third person, but if he is injured while not in his employ, can have his right of action. It cannot say that because he was in the employ of a certain concern he cannot have the right of action for a wrong done him by a third party, while if he had been in the employ of some other concern and injured under similar circumstances, he would have a right of action. This classification is arbitrary. It would not be a classification in fact, because there is no class to which the rule applies.

We respectfully submit that the decision of the Circuit Court of Appeals for the Ninth Circuit should be affirmed and the decision in this case of the District Court be reversed with order to overrule the demurrer.

Respectfully submitted,

GOVNOR TEATS,
LEO TEATS,
RALPH TEATS,
Attorneys for Respondents.

NORTHERN PACIFIC RAILWAY COMPANY *v.* MEESE.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 133. Argued December 10, 1915.—Decided January 17, 1916.

Federal courts must accept the construction of a state statute deliberately adopted by the highest court of that State.

The highest court of the State having held, in construing the Washington Workmen's Compensation Act of 1911, that the compensation thereby provided in the cases covered by its terms was intended to be exclusive of every other remedy and that all causes of action theretofore existing and not saved by its provisos were done away with, the Federal court should accept that construction.

In view of that construction, *held* that although the act did not specifically repeal §§ 183 and 194, Rem. & Ball. Code, the personal representatives of an employé, killed, while in the course, and at the place, of his employment, by the negligence of one not his employer, cannot maintain a suit at law therefor against the latter.

On the record in this case it does not appear that the Workmen's

Compensation Act of Washington is unconstitutional as a denial of the equal protection of the law.
211 Fed. Rep. 254, reversed.

THE facts, which involve the construction of the Workmen's Compensation Act of Washington and the duty of the Federal court to follow the construction of that statute in cases arising thereunder, are stated in the opinion.

Mr. Charles W. Bunn for petitioner.

Mr. Govnor Teats, with whom *Mr. Leo Teats* and *Mr. Ralph Teats* were on the brief, for the respondent:

The Workmen's Compensation Act of Washington, does not and never was intended to deny to or take from the heirs or personal representatives of the deceased husband and father, their right of action for damages against the railway company, it not being an employer of the deceased whose wrongful act caused his death. The death of respondent's intestate having been caused by the wrongful act and negligence of one not his employer, his heirs, the respondents herein, are not barred by the provisions of the Workmen's Compensation Act from maintaining their statutory right of action against the railway company by reason of the fact that at the time the deceased was injured, from which injuries he died, he was working with a class of employés covered by the act and acting in the discharge of his duties as an employé of that company and at the plant of that company.

The Workmen's Compensation Law was a product of certain conditions existing between workmen and employers in Washington by reason of the fellow-servant, assumption of the risk and contributory negligence doctrine of the common law in the first place and the waste of money paid by employers to casualty companies, the

uncertainty of relief, the abuses of such companies towards the injured workman, producing estrangement between workmen and employer, inimical to all concerned including the public, and the expense to the State from increased personal injury litigation between master and servant.

The Workmen's Compensation Law was not intended and does not relate to the right of action of a workman or his heirs against negligent third persons not his employers, except as provided in §§ 3 and 5 of the act and then at his option.

The manifest intent of the law is not to cover and compensate for accidents generally but to cover accidents occurring in those employments and occupations which are specifically classed as and which may be found by the commission to be extra hazardous. *Guerrieri* v. *Industrial Ins. Comm.*, 84 Washington, 266.

The Supreme Court of the State of Washington has not by construction or otherwise extended the application of the law to cases similar to the one at bar, and when called upon to construe the law in a case of this sort will follow the construction placed upon it by the Circuit Court of Appeals for the Ninth Circuit in 211 Fed. Rep. 254.

To extend the application of the Workmen's Compensation Law to right of action of a workman against a third person under the facts of this case, would be unconstitutional, and would be a discrimination against the respondents and not an equal protection under the law.

In support of these contentions of defendant in error, see also *Barbier* v. *Connelly*, 113 U. S. 27; Bouvier's Law Dict., Title Preamble; *Bowen* v. *Lease*, 2 Hill, 226; *Diana* v. *Lamerous*, 114 Wisconsin, 44; Endlich, Int. of Statutes, § 59; *Gulf &c. Ry.* v. *Ellis*, 165 U. S. 150; *Hanly* v. *Sims*, 175 Indiana, 345; *Huntworth* v. *Tanner*, 45 Wash. Dec. 482; *Kelley* v. *Madison*, 43 Wisconsin, 638; 28 Am. Rep. 576; Lewis, Sutherland Stat. Const., §§ 120–145; *McGaffin*

v. *Cohoes*, 74 N. Y. 387; *Mo. Pac. Ry.* v. *Mackey*, 127 U. S. 205; *Peet* v. *Mills*, 76 Washington, 437; *Replogle* v. *School Dist.*, 84 Washington, 581; *State* v. *Clausen*, 65 Washington, 195; *State* v. *Mountain Timber Co.*, 75 Washington, 581; *State* v. *Taylor*, 21 Washington, 672; *State* v. *Haun*, 47 L. R. A. 369; Sutherland Statutory Const., §§ 388–499.

Mr. Justice McReynolds delivered the opinion of the court.

Benjamin Meese, an employé of the Seattle Brewing and Malting Company, was fatally injured on April 12, 1913, while engaged about his ordinary duties at its plant in Seattle. Alleging that his death resulted from the negligence of the petitioner railway company, his wife and children brought this action for damages in the District Court of the United States. They relied upon the following sections, Remington and Ballinger's Annotated Codes and Statutes of Washington:

"Section 183. . . . When the death of a person is caused by the wrongful act or neglect of another, his heirs or personal representatives may maintain an action for damages against the person causing the death."

"Section 194. No action for a personal injury to any person occasioning his death shall abate, nor shall such right of action determine, by reason of such death, if he have a wife or child living, . . . ; but such action may be prosecuted, or commenced and prosecuted, in favor of such wife or in favor of the wife and children . . . "

The railway company demurred, specifying as one of the grounds therefor, "That there is no authority in law under which the plaintiffs' action can be maintained as against this answering defendant, it appearing from the complaint that Benjamin Meese, on account of whose wrongful death this action was brought, sustained the injuries

of which complaint is made, at the place of work and plant of his employer, and the plaintiff's claim comes within the terms of Chapter 74 of the Session Laws of the State of Washington for 1911, being an act relating to compensation of injured workmen," approved March 14, 1911.

By the act referred to the legislature of Washington specifically repealed certain sections of Remington and Ballinger's Code, not including §§ 183 and 194; established a comprehensive plan for the relief of workmen injured in extra hazardous work and their families and dependents, regardless of the question of fault; and likewise made provision for raising the necessary funds by enforced contributions from specified employers, both breweries and railroads being included.

The trial court (206 Fed. Rep. 222) held that the purpose of the act of March 14, 1911, was not merely to end controversies between employers and employés in respect of injuries to the latter, but to end all suits at law for the injury or death of employés while engaged in certain occupations, no matter by whom injured or killed, with certain exceptions not here important. And by a judgment dated July 11, 1913, the demurrer was accordingly sustained and the complaint dismissed.

This action of the trial court was reversed by the Circuit Court of Appeals (211 Fed. Rep. 254) the latter being of opinion that the act in question did not, and was not intended to, deprive complainants of their right to proceed under §§ 183 and 194 of the Code, since deceased was not its employé when the accident occurred. Counsel for the railway called especial attention to *Peet* v. *Mills*, 76 Washington, 437, decided November 28, 1913, and insisted that the conclusions there announced were in accord with the opinion and judgment of the District Court then under review; but the Circuit Court of Appeals rejected this view, saying: "We are unable to agree

with counsel that the Supreme Court of the State of Washington in that case reached a conclusion different from that reached by us in the present case."

The error now assigned and relied on is: "That the Circuit Court of Appeals should have followed *Peet* v. *Mills* and have affirmed the judgment of the District Court."

It is settled doctrine that Federal courts must accept the construction of a state statute deliberately adopted by its highest court. *Old Colony Trust Co.* v. *Omaha*, 230 U. S. 100, 116; *Fairfield* v. *Gallatin*, 100 U. S. 47, 52. The Supreme Court of Washington in *Peet* v. *Mills* construed the statute in question and we think its opinion plainly supports the holding of the District Court and is in direct opposition to the conclusion reached by the Circuit Court of Appeals. The following excerpts from the opinion will suffice to indicate its import:

"By this appeal, we are again called upon to review the Workmen's Compensation Act of 1911 (Laws 1911, c. 74), under appellant's contention that the act is applicable only where recovery is sought upon the ground of negligence of the employer. . . .

" . . . The conclusion is evident that, in the enactment of this new law, the Legislature declared it to be the policy of this State that every hazardous industry within the purview of the act should bear the burden arising out of injuries to its employés; and that it was the further policy of the State to do away with the recognized evils attaching to the remedies under existing forms of law and to substitute a new remedy that should be ample, full, and complete, reaching every injury sustained by any workman while employed in any such industry, regardless of the cause of the injury or the negligence to which it might be attributed. We can conceive of no language the Legislature might have employed that would make its purpose and intent more ascertainable than that made use of in the first section of the act. To say with

appellant that the intent of the act is limited to the abolishment of negligence as a ground of action against an employer only is to overlook and read out of the act and its declaration of principles the economic thought sought to be crystallized into law, that the industry itself was the primal cause of the injury and, as such, should be made to bear its burdens. . . . That in so doing the legislative mind was intent upon the abolishment of all causes of action that may have theretofore existed, irrespective of the persons in favor of whom or against whom such right might have existed, is equally clear from the language of section 5 of the act, containing a schedule of awards, and providing that each workman injured in the course of his employment should receive certain compensation, and 'such payment shall be in lieu of any and all rights of action whatsoever against any person whomsoever.' . . . For these reasons we are of the opinion that the compensation provided by the act in case of injury to any workman in any hazardous occupation was intended to be exclusive of every other remedy, and that all causes of action theretofore existing except as they are saved by the provisos of the act, are done away with."

Respondents' suggestion that the construction of the act adopted by the trial court would cause it to conflict with the equal protection clause of the Fourteenth Amendment, is without merit. They have raised no other question involving application of the Federal Constitution.

. The judgment of the Circuit Court of Appeals must be reversed and the action of the District Court affirmed.

And it is so ordered.

MR. JUSTICE MCKENNA is of opinion that the statute was properly construed by the Circuit Court of Appeals and that its conclusions do not conflict with the opinion of the state Supreme Court. He therefore dissents.